

Kicked to the Curb: Ugly Law Then and Now

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ABSTRACT

For most CRCL readers, discussion of the Americans with Disabilities Act (“ADA”) in the context of the politics of urban space will probably invoke images of frivolous lawsuits, backlash against civil rights law, and so on. This essay concerns a more unexpected and surprisingly blunt consequence of the ADA. I will focus on Portland, Oregon, where a new and cynical manipulation of the ADA pits disability rights against homeless rights. Setting this development in the historical context of a previous ordinance, the infamous “ugly law” that targeted poor disabled people in Portland and elsewhere, I will show how repudiation of that ordinance played a part in the creation of the ADA—an act now not only failing to prevent but even actively prescribing the targeting of poor disabled people. The case of Portland provides a broader opportunity to explore the relationship between people and physical space, considering: how city ordinances, and even federal civil rights law, can turn people into objects; how at the same time urban objects can enjoy protected status almost as if they were people; and how disability oppression, in the context of classed and capitalist social relations, has played a shifting role in these dynamics. Portland will also provide a location and occasion for exploring the relation between law and poetry (particularly street poetry) as forms of urban expression. Poems like those I take up here may be valuable tools for legal scholars, not simply because they document a stance, but because, in complex ways, they allow us to place laws in local dialogue with the people they affect.

THE UGLY LAW

Sometime during the second decade of the twentieth century, a woman commonly known as “Mother Hastings” was told by authorities in Portland, Oregon that she was “too terrible a sight for the children to see”: “They meant my crippled hands, I guess,” she told a reporter, “[t]hey gave me money to get out of town.”¹ “Mother Hastings” complied, moving to Los Angeles just as that city’s leaders were discussing enacting a version of the city ordinance that had targeted her in Portland. That kind of ordinance, enacted in many U.S. cities, was the subject of my book *The Ugly Laws*.² Portland’s law, one of the earliest in the country, went like this: “If any crippled, maimed or deformed person shall beg

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¹ *Love Blooms on Sidewalk*, L.A. TIMES, Jan. 14, 1917, at II2.

² SUSAN SCHWEIK, *THE UGLY LAWS: DISABILITY IN PUBLIC* (2009).

upon the streets or in any public place, they shall upon conviction thereof before the Police Court, be fined not less than five dollars nor more than one hundred dollars.”³ The city’s version was unusual in its explicit emphasis on begging, though all such laws were at their core panhandling law; “unsightliness,” the descriptor added in the most common version of the ordinance, was a status offense, illegal only for people without means. The ordinances were fitfully enforced; repeated outcries over decades in cities across the U.S. called futilely for police, courts, and mayors to finally get serious about banishing the unsightly beggar. Nonetheless, the laws had profound consequences for people like “Mother Hastings.”⁴

In the 1970s, after the well-publicized and by that point highly unusual arrest of a man in Omaha for violating an ordinance similar to Portland’s (“Begging Law Punishes Only the Ugly,” the local headline read), the disability movement, beginning its push for the Americans with Disabilities Act (“ADA”), seized on the law they called “the ugly law” as an iconic story of generalized state-sponsored disability oppression.⁵ The language they cited was the least begging-oriented and most highly-charged version of that chosen by most other cities that enacted this kind of ordinance:

No person who is diseased, maimed, mutilated or in any way deformed so as to be an unsightly or disgusting object or improper person to be allowed in or on the public ways or other public places in this city, or shall therein or thereon expose himself to public view.⁶

³ Portland, Oregon, Charter of the City of Portland, as Amended Together With the General Ordinances by the Order of the Common Council, No. 2959, § 23 (1881) [hereinafter Charter No. 2959]. In 1881, the Portland City Council drafted Ordinance No. 2959 §23, the ordinance in question here, in part because of its responsibility to provide “for the support, restraint, punishment and employment of vagrants and paupers.” *Id.* at §9. Immediately before § 23 came a paragraph that prohibited “Exhibiting cripples,” which read: “If any person or persons shall exhibit or cause to be exhibited upon the street, or in any house or public place within the city, any crippled, maimed or deformed person they shall be deemed guilty of a misdemeanor, and upon conviction thereof before the Police Court, shall be fined not less than twenty dollars nor more than two hundred dollars.” Immediately after it—as we will see this is pertinent to our present—came the prohibition of “Roaming about the streets after 12 o’clock at night without business.” *Id.* at § 22

⁴ The ordinance remains on the books. A measure on the May 2012 ballot asked voters to decide whether: “outdated Portland City Charter language referring to prohibitions on exhibition of ‘deformed or crippled persons’ and begging [shall] be deleted.” Portland, Oregon, City of Portland Measure 26-130: Amends Charter: Deletes outdated provision prohibiting exhibition of persons, begging, available online at: <http://onyourballot.vote411.org/race-detail.do;jsessionid=A17A5B407DA0D6DA32981A7EF6D430C5?id=10297152>. The League of Women Voters advised voters that “[n]o changes in City policing or operations” would result from a yes vote, and that a no vote would retain the old ordinance—Section 2-105(a) (54)—which would nonetheless “remain unenforceable.” *Vote411.org Election Information You Need*, League of Women Voters Education Fund (2012), <http://onyourballot.vote411.org/race-detail.do;jsessionid=A17A5B407DA0D6DA32981A7EF6D430C5?id=10297152>.

⁵ James Fogarty, ‘41 Begging Law Punishes Only the Ugly, OMAHA SUNDAY WORLD HERALD, Apr. 21, 1974, at B1.

⁶ Marcia Pearce Burgdorf & Robert Burgdorf, Jr., *A History of Unequal Treatment: The Qualifications of Handicapped Persons as a ‘Suspect Class’ under the Equal Protection Clause*,

For more or less accidental reasons, this language became identified with the city of Chicago, though many cities included it in their codes. The link to begging, poverty and homelessness was minimized or forgotten in the eloquent citations of the Chicago ordinance in disability activism, arts culture, and legal advocacy.

FROM UGLY LAW TO THE ADA

One of the most striking citations of the ugly ordinance emerged in popular culture after I finished writing the book: a scene in the 2007 film *Music Within*, a biopic of disability advocate, author, and motivational speaker Richard Pimentel, in which Pimentel (played by Ron Livingston) is depicted as being arrested in 1974 and, along with his friend Art Honeyman (played by Michael Sheen), is booked and fined for breaking Portland's ugly law. Pimentel, a leader in development of "disability management return to work models," is a former Chair of VACOR (Department of Veterans Affairs Civilian Advisory Committee for Rehabilitation), an author of a pioneering guide to AIDS in the workplace commissioned by the President's Committee on Employment of Persons with Disabilities in 1988, and, more recently, a developer of employer training programs for transition to work by disabled Iraq and Afghanistan war veterans. The *Music Within* arrest scene tells a story of the birth of disability rights consciousness that closely follows other narratives of Pimentel's life, like this account on a website devoted to his work:

[Pimentel] was drafted to Vietnam, where he survived a volunteer suicide mission and became an acknowledged war hero. During his brief celebration, a stray bomb exploded in his bunker and ravaged his hearing. . . . Richard refused to accept this fate. He returned to college where he met Art Honneyman [sic], "the smartest and funniest man he has ever known," who just happened to have a severe case of cerebral palsy. . . . At 3 AM, in celebration of Art's birthday, Art and Richard sat down in a local restaurant for a pancake breakfast. Their waitress threatened to call the police, deeming him the "ugliest, most disgusting thing" she had ever seen. They refused to leave and were arrested under the "Ugly Law," a statute that prohibited public appearances of people who were "unsightly." This injustice propelled Richard . . . headlong into the nascent disability movement.⁷

In one of his speeches, Pimentel gives a vivid and humorous account of the incident. He describes the waitress as "a woman who changed my life. The only woman who changed my life I haven't had to pay alimony to."⁸ In his version,

15 SANTA CLARA L. REV. 854, 863 (1975) (quoting CHICAGO, ILL. MUN. CODE §36-34 (1966)).

⁷ Milt Wright & Associates, Inc., *Dr Richard Pimentel: Life Story, as Portrayed in the Movie Music Within*, http://www.miltwright.com/_richard_pimentel/indexstory.htm (last visited October 13, 2010).

⁸ *Id.* (follow "7-minute Video" hyperlink).

when the waitress says to Art Honeyman, “I won’t serve you. I don’t even know if you’re a human being. I thought people like you were supposed to die at birth,”⁹ Honeyman, who is “an evil genius, with a terribly sharp sense of humor,” turns to his friend and says, “Richard. Why is she talking to you that way? You don’t look any worse than you normally look. But I’ve never heard a woman speak to you in that manner that you have not dated.”¹⁰ “The police came,” Pimentel continues, “and said if you don’t leave I’m going to put you in jail, and Art said ‘I want to go to jail.’ And then he said ‘And Richard wants to go to jail too.’ . . . I thought: If they didn’t want me to do civil disobedience, why did they make me read Thoreau? Plus I wanted to see how they were going to fingerprint Art.”¹¹ In this account the two are “taken in front of a judge and found guilty of breaking an ugly law—a law that actually started in Chicago. P.T. Barnum and company: they wanted the freaks to stay in the freak show and not go into town to have a burger. So they passed laws that say if you are an improper or disgusting object you cannot be on the public thoroughfare. We were found guilty.”¹²

In each of these versions Pimentel uses the legend of ugly law to make movement history. His historical account of ugly law is fictitious. Though the rise of ugly law coincided with the slow decline and uneven suppression of the freak show, the account concerning P.T. Barnum is inaccurate; Portland itself had a similar ordinance at the same time as Chicago. His autobiographical account may be legendary as well. I have been unable to verify Pimentel and Honeyman’s arrest for violating the ugly law. Portland’s law prohibiting “crippled and deformed persons” from being on the streets used different language than the words Pimentel quotes, and the wording of the Portland law itself had to do specifically with begging, not with being in or refusing to leave a place of business.¹³ True, Portland’s ordinance was originally titled with a broad “Cripples and deformed persons not allowed on streets.”¹⁴ Like its 1867 precursor in San Francisco, Portland’s ordinance wavered between being directed specifically at beggars and being directed generally at “deformed persons,” and this perpetual ambiguity is a key part of the history of ugly law.¹⁵ Still, a pancake house is not the street. But if Pimentel’s account contains unlikely elements, its political force is sharp and clear. Both for shock value and as a kind of underpinning theory, his narrative ties the meaning of disability to what Deborah Rhode has called the “long and unbecoming history” of legal regulation of appearance and of appearance bias, and it cries out for legal remedy.¹⁶ In this origin story of disability activism, the ugly law, as James Green puts it in his analysis of how social movements use the past, calls upon the audience to “take

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Charter No. 2959, *supra* note 3, at § 22.

¹⁴ *Id.*

¹⁵ San Francisco, California, The General Orders of the Board of Supervisors, City and County of S.F., Ord. 783 (1869).

¹⁶ DEBORAH RHODE, *THE BEAUTY BIAS: THE INJUSTICE OF APPEARANCE IN LIFE AND LAW* 117 (2010).

history to heart.”¹⁷ This year’s celebrations of the twentieth anniversary of the passing of the Americans with Disabilities Act, an achievement in which Pimentel played a significant role, show how much “to heart” that history was taken.

FROM THE ADA TO SIDEWALK MANAGEMENT

But history can be taken to heart in many ways, and recent events cast ironic light on the story I am telling. Advocates like Pimentel intended for the ugly law to make the case for the ADA, and for the ADA in turn to put an end to ugly law. For the “beggar,” the ADA would replace alms with access—access to jobs and to rights; for the “unsightly,” the Act would provide protection against bias and preclude discrimination based upon disgust. Others have written about how these promises go unfulfilled or only partially fulfilled today.¹⁸ My concern here is not with these ways in which the ADA has failed but with one way in which it has succeeded all too well: paradoxically promoting injustice at the very site of the original ugly laws, the public thoroughfares of urban space.

Most of the current spatial policies and practices that do the work of the old unsightly beggar ordinances route primarily through the mechanisms of rampant privatization and private control of “seurescapes” in the city.¹⁹ (Google “unsightly beggar” today and you will find references to private shopping malls enticing business owners with promises that no such undesirables will be allowed past the guards.) Despite and in tandem with these private mechanisms, new municipal laws that unmake the open city are still—and increasingly—appearing, and disability continues to play an important, often unrecognized but sometimes dramatically manipulated, part of their dynamics.²⁰ Portland, Oregon offers a telling example.

Portland’s mayor, Sam Adams, recently announced a new “Sidewalk Management Plan,” creating an ample “six to eight foot pedestrian use zone” within which pedestrians “must move immediately to accommodate the multiple users of the sidewalk.”²¹ (Specified exceptions to this rule include rallies,

¹⁷ JAMES GREEN, *TAKING HISTORY TO HEART: THE POWER OF THE PAST IN BUILDING SOCIAL MOVEMENTS* 1-4, 7-13 (2000).

¹⁸ *See, e.g.*, RUTH O’BRIEN, *CRIPPLED JUSTICE: THE HISTORY OF MODERN DISABILITY POLICY IN THE WORKPLACE* (discussing disability and unemployment); *See also* Rhode, *supra* note 16 (discussing appearance discrimination).

¹⁹ *See, e.g.* KATHERINE BECKETT & STEVE HERBERT, *BANISHED* 49 (2010) (discussing privatization); Lawrence Vale, *Securing Public Space*, 17 *PLACES* 3 (2005) (discussing seurescapes).

²⁰ *See* Tobias Armbrorst, Daniel D’Oca & Georgeen Theodore, *The Arsenal of Exclusion/Inclusion*, July 19, 2010, <http://www.interboropartners.net/2009/the-arsenal-of-exclusion-inclusion/> (describing the Arsenal of Exclusion/Inclusion as a “dictionary of 101 weapons that architects, planners, policy-makers, developers, real estate brokers, community activists and individuals use to open and close the city. . . .” It was produced for the 2009 International Architecture Biennale Rotterdam); *See also* Barbara Ehrenreich, *Is It Now a Crime to Be Poor?*, *THE NEW YORK TIMES*, Aug. 8, 2009, at WK9.

²¹ Mayor Sam Adams, *Sidewalk Management Draft Plan*, by Mayor Sam Adams, Mar. 24, 2010, <http://vimeo.com/10410659>.

parades, and waiting in line for goods or services).²² Announcing this new arrangement of space, city leaders cited a pressing crisis. Too many things were jostling up against each other: “[B]icycle racks, signal controller boxes, drinking fountains, fire hydrants, parking meters, transit shelters, light poles, mail boxes, telephones, retail and commercial doorways, garbage cans, newspaper boxes, benches, permitted carts and cafés, ‘A’ board signs and public art among other items must share sidewalks that can range from five to fifteen feet wide.”²³ As Daniel D’Oca has noted, other far larger and much more crowded cities haven’t seen the need for addressing sidewalk bottleneck and clutter with similar measures: Why Portland, and why now?²⁴

As with the ugly law, which was announced in Chicago in 1881 as a plan to decrease “street obstructions,” the “items” that don’t share sidewalks well enough to manage themselves on their own turn out to be human beings. Mayor Adams’ request for feedback on the draft proposal for the plan locates its origins in frustration at the lack of legal guidance in how to resolve conflicts between people with momentarily different plans for the commons:

Of all the issues a city faces, you might not think sidewalk management is among the most challenging. In fact, it is. Sidewalks are an important part of a city’s common space. They are a public venue that, under law, must accommodate a range of uses. Sometimes these uses compete with each other. Sidewalks are intended to provide people with safe corridors to travel on foot. But they also provide a place for people to stop, sit, and rest. Or play music. Or panhandle.²⁵

Though this list, like the enumeration of “items” above, appears neutral and democratic in impulse, its endpoint—and its starting-point—are actually quite limited and specific, the same ones, as it turned out, that the old unsightly beggar ordinance in Portland trained its sights upon. Significantly, as D’Oca has pointed out, the new pedestrian zone measures immediately out from the property line, preventing leaning or sleeping against buildings.²⁶ Here, once again, the panhandler, the “homeless,” and the “street person” are the true objects of “management” on Portland’s sidewalks.

This becomes clear in an examination of the origins of this new scheme. A number of preceding events led to the development of the plan. A “sit-lie

²² Portland, Oregon, Charter of the City of Portland, [Chapter 14A.50 Conduct Prohibited on Public Property](#) (Replaced by Ordinance No. 183754; effective May 6, 2010), <http://www.portlandonline.com/auditor/index.cfm?a=302317&c=28513> is

²³ Samuel Adams, Sidewalk Management Plan: Managing Portland’s Downtown Sidewalks, Sept. 17, 2009, <http://www.portlandonline.com/mayor/index.cfm?c=50977>; *see also* Request for Feedback: You might not think sidewalk management is. . . , Mar. 24, 2010, <http://www.portlandonline.com/mayor/index.cfm?c=49278&a=292906> [hereinafter Request for Feedback].

²⁴ *See* Daniel D’Oca, Arsenal of Exclusion & Inclusion: Sidewalk Management Plan, Mar. 28, 2010, <http://arsenalofexclusion.blogspot.com/2010/03/sidewalk-management-plan.html>.

²⁵ Request for Feedback, *supra* note 23.

²⁶ D’Oca, *supra* note 24.

ordinance” had been found unconstitutional by the Oregon Court of Appeals in 2005,²⁷ and, in response, city leaders made modifications. In February 2009, Portland’s “sit-lie” ordinance was ruled unconstitutional by the Multnomah County Circuit Court.²⁸ The sit-lie law had sought to prevent people from blocking downtown sidewalks; it had been conceived as a different means to achieve the same end as a previous anti-panhandling ordinance, which was also found unconstitutional.²⁹ In July 2009, *The Oregonian* published a letter from one visitor to the recent Elks Club convention in the city that struck a nerve with many Portland readers.³⁰ “Sometimes we forget how Portland looks and feels to visitors,” the lead-in to the letter began.³¹ It went on to quote a visiting Elk’s complaints about the “glaring problem” of “packs of rowdy, roving supposedly younger people, in groups, instead of an isolated homeless person here and there.”³² In September 2009, a large group of downtown business-owners held a closed-door meeting with Mayor Adams to voice concern about what they saw as an increase in aggressive panhandling since the city’s “sit-lie” ordinance was overturned. “There are more aggressive young transients here [than ever],” one retailer is quoted as saying in an article covering the meeting for the National Association of Convenience Stores.³³ One proposal at the meeting “called for a modified sit-lie ordinance,” reported the article.³⁴ “Another considered privatizing sidewalks outside of stores.”³⁵ In response to these pressures, on October 21, 2009, Portland’s City Council passed Resolution 36743a, calling for a new Portland Sidewalk Management Plan, part of which includes the creation of the “more efficient” sidewalk pedestrian zone.³⁶

The impulse behind this plan is understandable. People want to move safely and easily through the city. “Many,” write Katherine Beckett and Steve Herbert, “simply do not wish to see those who appear disorderly or otherwise inspire trepidation. Nor is it pleasant to be reminded of the deprivations

²⁷ State of Oregon v. Robison, A123659 State v. Robison (Or. App. 2005), available online at <http://www.publications.ojd.state.or.us/Publications/A123659.htm>.

²⁸ Aimee Green, *Sit-lie law ruled unconstitutional. Panhandling - A homeless woman beats Portland's ordinance to clear sidewalks*, THE OREGONIAN, Jun. 23, 2009, available online at <http://www.oregonlive.com/news/oregonian/index.ssf?/base/news/1245725707301860.xml&coll=7>. In the 2009 decision, Multnomah County Circuit Judge Stephen Bushong ruled that the newer version was still unconstitutional and that it was superseded by state law. He noted as well that disorderly conduct law could be used to accomplish the same ends as the “sit-lie” ordinance.

²⁹ *Id.* The “Sidewalk Obstruction” ordinance had prohibited people from sitting or lying on the sidewalk between 7 a.m. and 9 p.m. It also barred people from putting their possessions on the sidewalk unless they stayed within two feet of the belongings.

³⁰ Mary Kitch, *Aggressive Panhandling Mars Tourist's Experience*, THE OREGONIAN, Jul. 15, 2009, available online at http://www.oregonlive.com/opinion/index.ssf/2009/07/aggressive_panhandling_mars_to.html.

³¹ *Id.*

³² *Id.*

³³ *Portland Retailers Air Concerns Over Panhandling, Sidewalk Traffic*, NACS ONLINE, Sept. 15, 2009, <http://www.nacsonline.com/NACS/News/Daily/Pages/Archive/ND0915098.aspx>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Res. 3674a, Portland City Council (2009).

associated with homelessness, severe poverty, addiction, or mental illness.”³⁷ It is difficult to bear in mind, in the face of so much encouragement not to, the warnings issued by that close observer of the actual city Walter Whyte, in his great and still pertinent defense of loitering in the urban commons, *City: Rediscovering the Center*, in 1988: “Like canaries in a coal mine, street people are an index of the health of a place. . . . Street people are not just a problem; they are the heart of the street life of the center. Its liveliness is the test of the city itself.”³⁸ “The problem, that is,” writes Daniel D’Oca, “is that downtown Portland fulfills the function of a good city street: it is a dense urban space, where lots of different programs are forced to negotiate with each-other.”³⁹

What is happening in Portland is part of a larger pattern in the neoliberal American cities of the twenty-first century.⁴⁰ In new American urban spaces, Beckett and Herbert write, “an increasing number of acts are regulated and criminalized; the state’s ability to search, detain, regulate and monitor is expanded; and a system of invisible yet highly consequential gates and barriers increasingly constrains the movement of some urbanites in public space.”⁴¹ After vagrancy laws came under what Beckett and Herbert call “disabling scrutiny” in the 60s and 70s, “as part of the US courts’ short-lived ‘rights revolution,’” many U.S. city governments in the 1990s turned instead to “civility codes,” prohibiting specific behaviors such as sitting or lying down rather than designating specific potentially rights-bearing statuses (such as vagrants or transients).⁴²

But these new codes were still subject to successful legal challenge; Portland’s own “sit-lie” law was struck down as impermissible under the state’s constitution.⁴³ In further response to these limits, many cities today are developing an even more effective repertoire of legal tools, in particular the new blending of civil and criminal authority for which Beckett and Herbert’s powerful analysis retrieves a stark old name: “banishment.”⁴⁴ Mayor Adams’ new sidewalk ordinance does not banish its targets, though it drastically curtails the space available to them. But, it too supplements local criminal authority in order to act as a twenty-first-century functional replacement for vagrancy and loitering laws,

³⁷ BECKETT & HERBERT, *supra* note 19, at 21.

³⁸ WILLIAM WHYTE, *CITY: REDISCOVERING THE CENTER* 55 (2d ed. 2009) .

³⁹ D’Oca, *supra* note 24.

⁴⁰ See TRASHING THE NEOLIBERAL CITY 2–3 (Emily Forman & Daniel Tucker, eds., 2007), <http://www.learningsite.info/NeoTrashing.pdf>. Neoliberalism is defined as “the historical transformation and recent extension of capitalist market domination into every corner of the globe and into every moment of our waking lives. Its dominating logic of free-market fundamentalism corrodes social solidarity as it rejects social justice in favor of individual ‘freedom’ to compete and consume.” *Id.* In U.S. cities this has meant “the dissolution of most aspects of the social state (such as public education and public housing),” a “massive market for, and public financing of, the prison and military,” “the imposition of new surveillance and policing infrastructures,” and gentrification, “forcing . . . residents to become citizen-entrepreneurs competing with each other for extremely scarce employment opportunities and public resources.” *Id.*

⁴¹ BECKETT & HERBERT, *supra* note 19, at 11.

⁴² *Id.* at 13.

⁴³ Green, *supra* note 28.

⁴⁴ BECKETT & HERBERT, *supra* note 19, at 17.

one that Portland city leaders hope will pass constitutional muster.⁴⁵ It finds that supplement in a surprising place, one that returns us to the story of Richard Pimentel's ADA activism and its grounding in repudiation of the ugly law.

In a video produced by the mayor's office to tout the plan that resulted, images of street people sitting on pavement are juxtaposed with images of purposeful pedestrians, sidewalks crowded with people—and, not coincidentally, a disabled white man crossing the street using a power wheelchair.⁴⁶ An unprecedented legal framework underpinned the new plan, developed by the Mayor as instructed by the City Council, and here we return to the work of Richard Pimentel and his fellow disability activists.⁴⁷ Publicity for the new Sidewalk Management Plan emphasized its novel approach: for the first time, a city's policing of its sidewalks would be “based on the federal American with Disabilities Act . . . which includes specific design guidelines that disabled citizens need for unobstructed passage on public sidewalks. In this pedestrian use zone, persons must be on foot to be able to move immediately to accommodate people with disabilities as well as other sidewalk users.”⁴⁸

This plan is “a misuse of the ADA and rather exploitative of disabled people's hard-fought civil rights,” as disability scholar and activist (and Portland resident) Beth Omansky puts it.⁴⁹ She states that the draft plan is “especially offensive when we consider the recent history of police brutality against people with mental health impairments here in Portland.”⁵⁰ Given this history, the plan may set disabled people up as scapegoats who could possibly become targets of anger and frustration among homeless young people being shuffled around on the sidewalks and not given meaningful social support.⁵¹

Omansky notes that Portlanders are dealing with transportation cutbacks and more restrictive rules for paratransit eligibility at the very moment that the sidewalk plan has come into existence.⁵² It doesn't help that the City of Portland web site is inaccessible, despite years of prompting to fix it. The video the mayor's office produced inviting public response to the draft sidewalk plan is neither captioned nor audio-described. Sidewalks around Portland are filled with sandwich boards, magazine racks, and sidewalk cafe tables, but these obstructions

⁴⁵ *Id.*

⁴⁶ Sidewalk Management Draft Plan, *supra* note 21.

⁴⁷ Unprecedented in its specifics, but not in its general mode, which is an example of what Nicholas Blomley calls administrative pedestrianism. See NICHOLAS BLOMLEY, RIGHTS OF PASSAGE: SIDEWALKS AND THE REGULATION OF PUBLIC FLOW (2010).

⁴⁸ Request for Feedback, *supra* note 23.

⁴⁹ Email from Beth Omansky to Susan Schweik, Associate Dean of Arts and Humanities, U.C. Berkeley (on file with author); See also Jenny Westberg, *Keaton Otis: Third Portland Police Killing in 2010*, July 10, 2010, <http://www.theicarusproject.net/forums/viewtopic.php?t=20346&highlight=&sid=fc150fc6d8dfafb5b1c5a475e41dd593> (giving details of a number of people with mental illness killed by Portland police since the death of James Chasse, a Portland man with a diagnosis of schizophrenia who was beaten to death by police in 2006 and to whose family the city recently agreed to pay \$1.6 million).

⁵⁰ Omansky, *supra* note 49.

⁵¹ *Id.*

⁵² *Id.*

to disability access are explicitly permitted on sidewalks under the plan. Tellingly, the long list of links that the mayor's office provides to illustrate various city problems and pressures that led to the development of the Sidewalk Management Plan contains no reference whatsoever to problems of disability accessibility downtown.⁵³ In light of these facts, the plan's invocation of the Americans with Disabilities Act as its grounding legal framework reveals itself as hypocritical, a cynical manipulation of the principle of disability access as a weapon against homeless people in the city's "arsenal of exclusion."⁵⁴

Visit Portland's downtown area now and you will notice homeless people doing their best to comply with the ordinance, forced to sit next to the curb. More than before, they are exposed to the elements and vulnerable to traffic. Now, instead of keeping close to walls and doorways "they are positioned," writes Beth Omansky, "in the same part of the sidewalk with statues and fountains. It oddly looks like they, too, are on display."⁵⁵ A great number of them would, of course, qualify as disabled by ADA definition.⁵⁶

Jasbir Puar's analysis of current configurations of queerness in her *Terrorist Assemblages*, and other related recent works in queer theory, offer a useful framework for analysis here. Puar examines the recent generation of new normative "queer . . . disciplinary subjects" and the simultaneous use of queerness "as the optic through which perverse populations are called into nominalization for control."⁵⁷ In a similar and interconnected formation, here disabled subjects aligned with the interests of downtown business—those who must be allowed in—are distinguished from a disreputable population defined as inimical to

⁵³ See Laura Hershey Blog, July 30, 2010, <http://networkedblogs.com/6nUuN/> (analyzing the problems of disability accessibility downtown).

⁵⁴ D'Oca, *supra* note 24.

⁵⁵ Omansky, *supra* note 49.

⁵⁶ *Id.* The situation is sharply summed up in the position statement issued by Sisters of the Road on April 1, 2010: "According to the Vulnerability Index released in October 2008 by the Portland Housing Bureau, 47 percent of participants experiencing homelessness were found to have a high risk of mortality. The medical conditions these people face include HIV/AIDS, end stage renal failure, cirrhosis of the liver and other conditions that leave them extremely vulnerable to their environment, including undiagnosed and untreated mental illnesses. It is not ethical to pit one set of differently-abled people against a group of medically vulnerable people, especially when additional special treatment is given to others who can pay to be in these common areas." Sisters of the Road, *Official Position Statement on the Newly Released Draft Public Sidewalk Management Plan*, April 1, 2010, <http://sistersoftheroad.org/programs/take-action-and-sisters-position-statements/>.

⁵⁷ JASBIR K. PUAR, *TERRORIST ASSEMBLAGES: HOMONATIONALISM IN QUEER TIMES VIII* (2007). Puar herself opens the door to disability analysis at moments like this: "[T]he cost of being folded into life might be quite steep, both for the subjects who are interpellated by or aspire to the tight inclusiveness of homonormativity offered in this moment, and for those who decline or are declined entry due to the undesirability of their race, ethnicity, religion, class, national origin, age, or bodily ability." *Id.* at 10. I am indebted to Puar's analysis throughout this essay, as I am to Robert McRuer's recent work in a series of conference talks. See, e.g., Robert McRuer & Julie Passanante Ellman, Address at the Desiring Just Economies Conference: Interdependency, Rehabilitation, and Necropolitics: Dis/Ability in the Emergent Global Order (June 2010); see generally Robert McRuer, Address at the Georgetown University Chesapeake American Studies Association Annual Conference: Enfreakment; or, Aliens of Extraordinary Disability (Mar. 27, 2010).

“Americans with Disabilities,” one that must be driven away. By the same token, the “homeless person” who “blocks the sidewalk” works to define and discipline the good disabled citizen, reinforcing the rules of production and particularly consumption which constitute his or her entrance ticket into city life.⁵⁸

As Puar puts it, the “politics of recognition and incorporation entail that certain . . . bodies may be the temporary recipients of the ‘measures of benevolence’ that are afforded by liberal discourses of multicultural tolerance and diversity.”⁵⁹ But this emergence into “the bountiful market and the interstices of state benevolence,”⁶⁰ Puar notes, “is contingent upon ever narrowing parameters.”⁶¹ Under this model Portland capitalizes upon its image as an exceptionally livable, an extraordinarily progressive and tolerant city, while at the same time consolidating systems of disgust, phobia, and abandonment used against certain (non)members of the urban community.⁶² Ideal city life expands to include exceptional disabled people, liberal consumers, within its public spaces, but only under a normative disability ideology, what we might call (dis)ablebodiedness, that shores up traditional ideologies of the bodily capability and integrity of the upright citizen.⁶³ Others, abject and expendable, “framed as manifestations of disorder,” are given over to monitoring, profiling, containment, and exile to the periphery—kicked to the literal curb.⁶⁴

The welcome of the new civic (dis)abled subject, the one curb cuts were made for, is made possible not only through the estrangement and disavowal of a group of other people but also through the curbing of disability, a stark delimiting of the parameters of the term to exclude intolerable forms of bodily variety and vulnerability (mental illness and addiction, for instance, but also any form of impairment that manifests itself for someone too down-and-out or out-of-bounds to be identified as a person with material and cultural capital). Without a doubt, as I have said, many of the people targeted for removal by Portland’s new

⁵⁸ See PUAR, *supra* note 57, at 38.

⁵⁹ *Id.* at xii (citing REY CHOW, *THE PROTESTANT ETHNIC AND THE SPIRIT OF CAPITALISM* 10 (2002)).

⁶⁰ PUAR, *supra* note 57, at xxvii.

⁶¹ *Id.* at xii.

⁶² Portland’s reputation as a model of New Urbanism and sustainable development may contribute to the eventual adoption of this new instance of “progressive” sidewalk management by other cities. For critical analysis of model Portland, see generally *The Portland Edge*, which includes a chapter providing background on policies regarding homelessness in the city. Tracy J. Prince, *Portland’s Response to Homeless Issues and the “Broken Windows” Theory*, in *THE PORTLAND EDGE: CHALLENGES AND SUCCESSES IN GROWING COMMUNITIES* 280 (Connie P. Ozawa ed., 2004). The situation is similar to that described in BECKETT & HERBERT, *supra* note 19, at 8 (focusing on Seattle’s deployment of a “social control regime that lies in sharp contrast to its progressive image” and its use of new methods “to monitor and arrest in an attempt to clear the streets of those considered unsightly and ‘disorderly’”).

⁶³ I am following the suggestive lead here of McRuer & Ellman, *supra* note 57, who insert the slash between “Dis” and “Ability” in the title of their paper. Also, see Lisa Duggan’s use of the word “homonormative.” Lisa Duggan, *The New Homonormativity: The Sexual Politics of Neoliberalism*, in *MATERIALIZING DEMOCRACY: TOWARD A REVITALIZED CULTURAL POETICS* 175, 179 (Russ Castronovo & Dana D. Nelson eds., 2002). See also PUAR, *supra* note 57, at 2, 38, 39 (describing the origin of the word “homonationalism”).

⁶⁴ BECKETT & HERBERT, *supra* note 19, at 24.

sidewalk plan are themselves, by legal definition, disabled. But, under the terms of Portland's new plan, the (dis)abled citizen consumer, the one on the move, is putatively well-heeled, unthreatening but threatened; the threatening homeless other is the one not covered by the ADA, precisely not disabled.

The unhappy history of ugly law suggests that although Portland's new sidewalk plan may temporarily satisfy the interests of civic and business leaders, it will ultimately be fruitless. Like the new banishment mechanisms in neighboring Seattle, Portland's trumpeted new approach will be another "politically successful policy failure."⁶⁵ The plan does not resolve the underlying problems that have caused Portland's downtown trouble: the consolidation and ongoing crises of global neoliberal capitalism; the dismantling of already diminished social welfare mechanisms; increasing gentrification; racism; the ongoing effects of deinstitutionalization.⁶⁶ Nor does the plan genuinely resolve problems of disability access in the city of Portland. Moreover, the new sidewalk plan is likely to make the situation worse, both by underscoring the cultural association of homeless, poor, and young people with obstruction and undesirability, and by creating a profoundly misleading opposition between "Americans with Disabilities" on the one hand and "street people" on the other.⁶⁷ Solutions to the problems manifesting on Portland's downtown sidewalks must be sought beyond policing and the courts. As Beckett and Herbert argue, "the reduction of inequality and the restoration of the social welfare net are central to

⁶⁵ BECKETT & HERBERT, *supra* note 19, at 22. (quoting PETER ANDREAS, *BORDER GAMES: POLICING THE U.S.-MEXICO DIVIDE* (2001)). See also *id.* at 157.

⁶⁶ See generally *id.* at 17. On the situation in Portland specifically, see MATT HERN, *COMMON GROUND IN A LIQUID CITY: ESSAY IN DEFENSE OF AN URBAN FUTURE* 125-45 (2010) on the commodification and gentrification of sustainability. See also the ongoing reports from the exemplary nonprofit organization centered on the Sisters of the Road café in Portland, whose mission is "to build authentic relationships and alleviate the hunger of isolation in an atmosphere of nonviolence and gentle personalism that nurtures the whole individual, while seeking systemic solutions that reach the roots of homelessness and poverty to end them forever." Sisters of the Road, About Sisters of the Road, <http://sistersoftheroad.org/about-us/about-sisters-of-the-road/> (last visited Jul. 2, 2012). Their participatory action research is summarized at Sisters of the Road, Systemic Change Team at Sisters of the Road, <http://sistersoftheroad.org/programs/systemic-change/> (last visited Jul. 2, 2012) and by Lisa Hoffman & Brian Coffey, *Dignity and Indignation: How People Experiencing Homelessness View Services and Providers*, 45 SOC. SCI. J. 207 (2008). As one of the leading members of Sisters of the Road put it in a letter to local paper, "This ordinance, while attempting to create an illusion of safety, fails to actually do anything to address the true cause of insecurity in our community—which is the crisis in housing, employment, education and health care." Monica Beemer, Letter to the Editor, *The Homeless: The Problem Isn't the People, It's the System*, OREGONIAN, May 24, 2010.

⁶⁷ See BECKETT & HERBERT, *supra* note 19, at 34-35. As problematic as the opposition between disabled Americans and street people is the reverse: a reduction of homelessness to illness. Vincent Lyon-Callos explores how popular individualizing discourses "interact with neoliberal conceptualizations . . . to produce understandings and practices based upon a medicalized hypothesis of deviancy." VINCENT LYON-CALLOS, *INEQUALITY, POVERTY, AND NEOLIBERAL GOVERNANCE: ACTIVIST ETHNOGRAPHY IN THE HOMELESS SHELTERING INDUSTRY* 51 (2004). The resultant focus on treating individual homeless victims of disease (such as mental illness) diverts attention from systematic inequity and larger questions of resource distribution. The conceptual key here is to keep in mind an insistent *social* model of the disability showing or hiding itself on the streets of Portland. *Id.*

any effort to meaningfully address urban disorder”—and the problem of disability inaccessibility.⁶⁸

TOWARDS A CONCRETE UTOPIA OF SIDEWALK POETRY

A different history of the movement from the ugly laws to the ADA and to the emergent future city community—a history we might better wish to take to heart—can be found in the poems sold outdoors by the late Art Honeyman, Richard Pimentel’s fellow arrestee in the Portland pancake house in 1974, and a well-known public figure for decades in his native Portland.⁶⁹ Honeyman’s poetics, in his words “unpredictably palsied,” sometimes overtly dialectical, always ethically self-conscious, offer for me a better model for thinking through the example of Portland than the progress narrative provided by his friend Pimentel, that story in which the ADA simply did away with the problems represented by the ugly law.⁷⁰ “The key political challenge” in response to “the new punitive city” is, as Beckett and Herbert put it, to develop a discourse that “would recognize several realities: that extreme inequality adversely impacts us all, that poverty stems from structural dynamics . . . that security means something more than protection for middle-class whites from the discomforts of urban life . . . and that tolerance of diversity is integral to democracy.”⁷¹ Honeyman’s poetry is one model of such discourse. “[E]ven as activists, artists, and intellectuals negotiate compromised institutions and state-based forms,” Robert McRuer has written, “what forms of being emerge *in excess* of that?”⁷² Honeyman lived an everyday form of being that not only demanded the compromised institution of the ADA but also emerged continually in excess of it. His poetics dwell on, rather than spurn, life at the curb, and refuse to be confined there.

Honeyman’s politics and aesthetics are best expressed in the title of one of his volumes of poetry, *Umbly Yours: Random Poems*. The first poem in that book begins with the coined verb “umbling”; the word is in large typeface, with small

⁶⁸ BECKETT & HERBERT, *supra* note 19, at 153.

⁶⁹ A writer, dancer, and political organizer, Honeyman published multiple volumes of poetry that he sold at the Old Town Saturday Market. Much of his life work involved experiments in radical access, from the simplest activities (“He likes to take friends out to the fanciest restaurants in Portland,” one Portland journalist reported in a profile of Honeyman in 2005, “if only because he knows his presence might put some people off their food”) to the most complex technologies (he collaborated with a researcher at MIT to create “Poemshop,” a tool for expressive text-to-speech manipulation of intonation for synthesized poems). Inara Verzemnieks, *Art Honeyman Hits the Street*, THE OREGONIAN, July 31, 2005, available at http://blog.oregonlive.com/oregonianextra/2008/01/profile_art_honeyman_hits_the.html. On Poemshop, see GRAHAM PULLIN, DESIGN MEET DISABILITY 165–66 (2009).

⁷⁰ On the “unpredictably palsied” aesthetic the poet claims, see his “ie ee cummings,” in ART HONEYMAN, *UMBLY YOURS: RANDOM POEMS & COVER DESIGN* (1992). On Pimentel’s progress narrative, see *supra* pp. 5–6.

⁷¹ BECKETT & HERBERT, *supra* note 19, at 158.

⁷² Letter from Robert McRuer to Susan Schweik (on file with author) (emphasis in the original). See generally ROBERT MCRUER, CRIP THEORY: CULTURAL SIGNS OF QUEERNESS AND DISABILITY (2006) (discussing the visibility and invisibility of certain cultural identities and norms).

prefixes “b/gr/m/st” at its side: “[B]umblng, grumblng, mumblng, stumblng,” a taxonomy of the moves and manners of a bum, someone apt to be considered unsightly and inconvenient in public space, encompassing mobility disability, psychiatric disability, and communication disability. If “umbly” nods toward the Cockney, a kind of Alfred P. Doolittle posturing, Honeyman’s version of rhyming slang, converting an attitude (“umble”) into a verb (“umblng”), is a form of distinctly American street slang.

It is also distinct American disability slang. The poem goes like this:

b/gr/m/st/UMBLING
 my way through existence
 but i have not bit the dust
 and I am humbly grateful
 umbilical cord acting up I was born
 into palsied chaos and have danced
 to a different step ever since
 and though I shake and slobber
 and stutter my way through life
 occasionally missing the right turn
 my skull on even harder objects
 and sometimes narrowly escape
 injury caused by collision of me
 and another faster traveling body
 like a train or other motor vehicle
 again reminding me of my ultimate
 vulnerability in the game of life
 strengthening my determination
 to keep on going until the last play
 even if I cannot easily pronounce
 the h letter and call myself oneyman
 or tell bible thumpers to go to ell
 for my crippled drooling mouth
 are for me interesting and umbling⁷³

This is not, the poem tells us, the dropped “h” of Cockney culture. It is the dropped “h” of disability culture: the effect of speech impairment claimed as poetics and politics, positively crippling and drooling. “Umbling” becomes a deliberate act and a spiritual/ethical principle, one that accepts bodily variety and vulnerability as one’s own—as our own, since the “h” vanishing renders Honeyman an any-man (oneyman). If, in this origin story of the poet with cerebral palsy, (H)oneyman’s “umbilical cord,” whose echo lies behind the “umble,” keeps “acting up,” its activism (as in AIDS movement politics), its anger (as in “acting out”) and its comic performance link him ‘umbilically’ to a minority movement disability story (in which disability, in direct opposition to the basic principles of ugly law, is found “interesting” rather than off-putting). But they link him as well—at the navel—to the most basic and literal core connection

⁷³ HONEYMAN, *supra* note 70, at 19.

of shared animality and humanity.

This recognition in Honeyman’s work does not, however, place him in simple sentimental alliance with the people targeted by Portland’s new sidewalk management plan. His poem “when I am an old man” asserts values of “abundant activity/and high productivity,” “for I have no desire to be remembered as one/who. . . sat in the gutter or spat on the sidewalk” (“when I am an old man”).⁷⁴ Another poem, as if addressed directly to the troublesome sidewalk-blockers of Portland’s Management Plan, begins “I do not trust you”:

i do not trust you
because I am lucky
in my circumstances
and do not now
have to pan handle
i would like to
give you the coin
that you have asked for
but experience teaches me
that beggars often abuse
charitable minded cripples
like me by conning us
into allowing them to go
through our pockets or purses
then rip us off and leave us
feeling like the foolish idiots
that most of even our modern society
perceives us to be
and in all candor
it is far too high a price to pay
and therefore
brother or sister whoever you are
i smile at you and rapidly pass you by
uttering these words of a good friend
i hope your situation improves dramatically⁷⁵

Still, the scene here is not one of blockage—the speaker “rapidly pass[es] by”—but of interaction and engagement. Honeyman’s poem refuses to set his interests against the street panhandler’s or to place himself in contradistinction to that figure, even as it openly acknowledges the kind of conflicts that produced the sidewalk plan. This sidewalk poem enacts a (literally) concrete utopia, in which, as in John Brenkman’s 1985 analysis of the “concrete utopia of poetry,” “the utopian dimension . . . is enacted in a poetic speaking which manifests the struggle between the social conditions of the poet’s speech [class conflict, class privilege, street violence, ableism, communication impairment] and the latent possibilities of speech” as they are reconfigured in the imaginary, anticipatory

⁷⁴ *Id.* at 45.

⁷⁵ *Id.* at 21.

beggar/cripple conversation.⁷⁶

Margaret Kohn has delineated three kinds of common arguments for street peoples' right to the city: the liberal (assertion of individual freedom and rights), the romantic (celebration of countercultural modes of living), and—what is for her the most effective approach—the democratic.⁷⁷ Drawing on Kohn, Anastasia Loukaitou-Sideris and Renia Ehrenfeucht sum up the democratic defense: “Seeing others makes urbanites better educated about the city in which they live and gives them better basis for making decisions about social programs. Through their presence, people who are homeless are also in a better position to demand what they need.”⁷⁸ Art Honeyman's approach to the politics of city space, resolutely democratic in this sense, insists on the necessity and the vitality of regularly “seeing others,” a model directly borne from a disability sensibility, the long experience of being told to hide from public view.⁷⁹ His poems make clear that it matters not only *that* we see others but *where* we see other: persons, or disability, relegated only to the verge or the gutter or the curb are in no position to articulate demands.⁸⁰

AN ‘UMBLE PROPOSAL

The Americans with Disabilities Act is now being used in Portland's sidewalk plan as what Daniel D'Oca and his artists' collective, in their taxonomy of the weapons in cities' “arsenals of exclusion,” call the “weak tactic of the strong”: one of those subtle, sidelong mechanisms for closing off city space, like residential parking permits, armrests on benches, or “No Cruising Zones.”⁸¹ This is wrong. The ADA was intended to be a strong tool of the “weak.” Following Honeyman, I would make the ‘umble proposal that the ADA should be used by city governments only as a strong tool of the strong, employed by city planners and policy-makers arduously committed to facilitating genuine, meaningful access for all. At the moment in Portland, the Americans with Disabilities Act, intended to be the legal end of the ugly law that drove “Mother Hastings” out of Portland, is now being hypocritically twisted, in a terrible but familiar irony, precisely against people exactly like her.

⁷⁶ John Brenkman, *The Concrete Utopia of Poetry: Blake's “A Poison Tree,”* in LYRIC POETRY: BEYOND NEW CRITICISM 182, 192 (Chaviva Hošek & Patricia Parker eds., 1985) (drawing on and extending Ernst Bloch's idea of concrete utopia).

⁷⁷ MARGARET KOHN, BRAVE NEW NEIGHBORHOODS: THE PRIVATIZATION OF PUBLIC SPACE 172–84 (2004).

⁷⁸ ANASTASIA LOUKAITOU-SIDERIS & RENIA EHRENFUCHT, SIDEWALKS: CONFLICT AND NEGOTIATION OVER PUBLIC SPACE 187A (2009) (citing Kohn, *supra* note 77, at 167–88).

⁷⁹ Resistance to social pressure to stay hidden is a common theme in Honeyman's work; the fullest exploration of it is in his charming children's book SAM AND HIS CART (1977).

⁸⁰ See JAMES WINTER, LONDON'S TEEMING STREETS, 1830-1914 100 (1993) (noting the negative connotations of the verge, the curb, and the gutter in border territory between the sidewalk and the street).

⁸¹ Armborst et al., *supra* note 20.