

LAW, SPORT, AND DISABILITIES: SOCIOLOGICAL APPROACHES

Gaillard Joel¹

Abstract

Handicap is a generic concept which can comprise heterogeneous groups of people. Any international comparison reveals itself to be an arduous task. In fact the groups of people concerned are not the same everywhere and practices vary according to this specific cultural, social and economic backgrounds. Public policies depend on the different representations of the notion of handicap and are influenced by both disabled people themselves as well as by policy makers as well. For example in France from the early 1960s the word « handicap » was progressively replaced by other nouns such as “infirme” (disabled) or “inadapté” (usted, malad). The shift in meaning of the word “handicapé” seems to be related to the distressing ordeals experienced by some, which have led to somatic and mental weaknesses and to the idea that ways can be found to compensate for handicaps and allowing ways to live as an able-bodied person. Beyond the widely spread social norms and behaviour, the handicapped person faces constraining representations almost stereotypical which a lead to the sense of enclosure. Being born triggers or handicapped generates a whole set of psychic disorders provoking an inner and collective moral suffering. The human body can be considered as the prevailing pillar of identity for both handicapped and valid people. A two-fold psychological mechanism seems to be at the root of the handicapped person’s self-acceptance and his/her relationships to others and to social groups. Through a mechanism of objectification the subject rediscovers his/her own and full identity within the world of able-bodied persons.

¹ Faculty of Sport Nancy France joel.gaillard@univ-lorraine.fr
LISEC : Laboratoire des Sciences de l'Education et de la Communication
(EA 2310)

Through the mechanism of appropriation the handicapped person accepts his/her self-experienced own image as he experienced it. The construction of this new identity is internally nurtured and is strengthened by the close personal interactions which certainly contribute playing an important role in the development of our identity. The process is firstly generated among family members and then it is progressively encouraged more widely encouraged by social relations. In this perspective sport will fully impact the process. Beyond too widely and hurriedly accepted evidences it is highly recommend one should disregard preconception we might have, even those barred or so-called evidence and be prepared to change our area of focus to define the ideal approach. The main goal was to try to understand why and how sport activities can help to generate a transformation of self and social perception of our identity. The report presents the results of a survey, which was conducted in 2011 by the « Pôle Ressources National Sport et Handicaps » addressed to 1600 Clubs and 16000 Athletes indicate that a large number of clubs are really involved in the procedure of welcoming and confirms the positive impact of physical activity in order to reclaim a normal social image despite number of personal obstacles and considerable number of people with disabilities live in residential institutions. The survey shows also that clubs adapt their structures and procedures to facilitate the inclusion of people with disabilities, rather than expecting them to change to fit in with existing arrangements.

Introduction: The Issue of Disability

From the Act of 9th April 1898 on workplace accidents which, in its first article, stated that “Accidents which come about out of or in the course of work, affecting workers and employees whose occupations are in the industries of building, factory labour, manufacturing, construction, transport by land or by water, loading or unloading, warehouses, mines, mining, quarries, and, furthermore, in any operation or part of an operation in which explosive materials are manufactured or put to use, or in which an engine-powered machine is used by a force other than human or animal, give the right, to the benefit of the victim or their

representatives, to compensation at the expense of the company director, on the condition that the interruption of work has lasted longer than four days”² to the Act of 11th February 2005, comprising 101 articles which have made the notion of disability visible as a social phenomenon “Any disabled person has the right to the solidarity of the whole of the national community, which guarantees them, as a result of this obligation, access to the fundamental rights recognised by all citizens as well as the full exercise of their citizenship”, there have been 468 articles concerning disability, 995 concerning sport and 16 concerning sport and disability which may be found in the 74 codes that govern French public life³.

The modifications introduced by the Act of 11th February 2005 affect fifteen codes, principally the Social Action and Families Code, but also, to differing degrees, the Education Code, the Public Health Code, the Social Security Code, the Labour Code, the Construction and Habitation Code, the Town Planning Code, the General Code of Taxation, the Civil Code, the Electoral Code, the General Code of Regional Authorities, the Penal Code, the Code of Insurance and even the Public Sector Code and the Rural Code. To be absolutely thorough, we must add to the list an element of the Municipalities Code specific to Saint-Pierre-et-Miquelon⁴!

It is in this way that no less than seven acts of legislation share the recognition and the reparation of disability⁵. Indeed, from the ordinary

²Law of April 9th 1898 “Concerning the responsibilities for accidents at work where the workers are victims in their work”

³One observes that more than half the people who feel a limitation in daily life do not have social recognition, either because they do not take action, or because their disability does not form part of the criteria for recognition by society. In other studies carried out from the HID survey data, it would appear that 30% of people possessing a socially recognised disability did not declare it during the survey. Sources: Fronteau-Loones Anne, Les contours de la notion du handicap à travers les données statistiques, in La compréhension sociale du Handicap, CREDOC, Cahier de recherche N°1 82, 2003, p 34.

⁴One notes that France is governed by 74 codes.

⁵These are the acts of legislation in question: ordinary law on the compensation of accidents caused by a third-party (1804), general law on

law on compensation by a third-party edited in the Civil Code of 1804 in articles 1382 and 1383 “*Any act committed by a person who causes damage to another shall render the person through whose fault the damage was caused liable to make reparation for it*” to the Act of 2005 which allows the transition from being automatically an object of care to this being taken into consideration⁶, it is no less than the passage of 121 years over which debates and written legislation have been established. From a strictly regulatory perspective, the balance sheet is however “very positive because 99% of the implementation texts have been published (220 degrees and by-laws)”⁷. According to the 2005 Report from the Ombudsman, (Jean-Paul Delevoye) 10% of them have had their articles changed, making the approach still more difficult. Evidently, to speak of laws, of sport and of disability is first to pore over the genesis of the texts that currently govern us.

Review of Culture and History

Since the farthest reaches of antiquity, peoples have regulated the compensations due as a result of bodily injuries. “In Athens and across the diverse towns of Greece, there existed schools of this kind, under the name of Sundories or of Heteries. Their members would deposit money into a common chest, a sum of money agreed on in order to come to the aid of those who might be struck by adversity”⁸. In the Life of Lycurgus, Plutarch informs us of Lacedaemonian institutions, notably that when a child was born in Sparta, it was examined by a council convening the

workplace accidents and illnesses in a professional context (1916), law on disability insurance (1924) and the legislation concerning the other categories of disabled people (laws of 1949, 1957, a policy act in 1975 and the Law of 11th February 2005).

⁶Indeed where the policy act of 30th June 1975 spoke of “objects of care”, it went on to make reference to the life plan of the person and to the principle of non-discrimination.

⁷Information report on the application of law n° 2005-102 of 11th February 2005, by Claire-Lise CAMPION and Isabelle DEBRE, recorded at the Senate on 4th July 2012.

⁸Gérando J-M, De la bienfaisance publique, Paris, Jules Renouard et C^{ie}, 1839, Tome III, Chapitre II, p 58.

eldest members of the tribe. If the new-born was deemed too puny or sickly, the council would order it to be abandoned on a precipice. In his ideal city, Aristotle judges it necessary to establish a law “preventing the nourishment of anyone infirm”. However in the 4th century, the city of Athens proposed a pension to invalid soldiers and apparently also civilians. It seems that a system of assistance similar to the one created in Athens was also in existence in Taras and Rhodes. The city is thus “assimilated into the enlarged family circle and intervenes in its role of assistance at the side of the most impoverished. It is obliged, out of strictly political reasons, and with no humanitarian basis, to maintain the civic body and, in the case of failure in the family, to substitute itself for this family”⁹. Achille Geerts¹⁰ writes that, from 2050 B.C., a right to compensation, proportional to the value of the body part lost, is explicitly established in the Tablet of Nippur. It referred to a system of flat fees, valuing the loss of each of the parts of the body at a specific price. The so-called Hammurabi code spoke of “fair suffering” [...] “so that the strong do not oppress the weak”. The Fourth Book of Ulpian¹¹, based on “natural” laws, proposed that a child born “monstrous” could not be considered as a human being and proposed that, in the case of a sudden appearance of this kind, the assistance accorded to the mother be of the same order as if she had three children.

According to Denys Halicarnasse, it was forbidden to “kill any child of less than three years of age, unless the new-born was since its birth infirm or monstrous (in which case it was not forbidden for parents to expose the child as long as they had first shown it to five men of the neighbourhood and obtained their consent”¹². Roman law thought about

⁹Samana Evelyne, *Bons pour le service*, in Collard Franck et Samana Evelyne, (under the direction of), *Handicaps et sociétés dans l’histoire*, Paris, L’Harmattan, 2010, pp 46-47.

¹⁰Dr Achille Geerts, *L’indemnisation des lésions corporelles à travers les siècles*, Paris, Librairies Techniques, 1962, qtd. by Eve Gardien in CREDOQ, p 199.

¹¹Ulpian Domintius Ulpianus (died murdered in 223). The author of many treatises dealing with law in particular, he is the principal source of inspiration of Justinian’s Digest, published in 533 AD.

¹²Michel Ducos in Collard Franck and Samana Evelyne, *op. cit.*, p 86.

the question of disability not with a view to guarantee or to give rights to the disabled but, in order to determine, within traditional and highly-compartmentalised societies, to “what extent a disability implies a change of category or not, to what extent it prevents the carrying out of economic (slaves) or public (magistrates) functions which required both a visible and exterior integrity”¹³. The Lex Aquilia planned compensations according to the harm suffered. They could be allocated to a group if the harm suffered by one of the members affected the capacities of the group.

In the middle Ages, the Church and its doctrine of alms provided disabled beggars with a place in society as objects of Christian charity. The “Tale of the Three Hunchbacks” shows us the “diabolical” character of disability¹⁴. We are faced with the “Christian body”, that is to say a body that awaits its meeting with Jesus who cured the infirm, who offers to everyone the mystery of the Resurrection: “Twisted, sickly, amputated bodies, return to the tenderness and the offer of the salvation of God in Jesus Christ and to these very practices *that* we are bound to show to our fellow human beings, especially when they are in poverty”¹⁵. If they were tradesmen or at least town inhabitants and as long as the cause of their infirmity was not scandalous (for example, a mutilation as a form of punishment), they were able to obtain a modest income. However, the vast majority were itinerant beggars, on the margins of society and doomed to an ignoble and poverty-stricken destiny. To survive, they exhibited themselves at trade shows, amused the courts as the King’s fool, had recourse to all sorts of pauper’s ruses or inspired pity by showing their infirmities in front of churches. The infirm, then confused with all the poor, the poverty-stricken of society convicted of vagrancy, were often arrested and imprisoned in establishments whose model, from 1656, was the General Hospital of Paris. The hospital then was synonymous with the asylum or the prison. Asylum because it provided

¹³Collard Jean Franck in Collard Franck, Samana Evelyne, op. cit. p 6.

¹⁴Journal Général de l’instruction Publique, Huitième volume, 1839, p 354.

¹⁵Stiker Henry-Jacques, Les fables peintes du corps abîmé, Les images de l’infirmité du XVIème et au XXème siècles, Paris, Ed. du Cerf, 2006, p 29.

for all its inmates' needs and ultimately cared for them and prison because the sentences pronounced there were often long-term detention or a life sentence.

Before the 14th century, the physically disabled were considered unable to work, meaning that they were placed under the care of the family or of the village parish. "The most natural thing was that there were malformations". Disability and religion were closely intertwined at the time. Physical deviancy was a "normal anomaly", and what is more, it brought about the opportunity to do good. It allowed the wealthy to buy their place in paradise through alms to the poor and the disabled. Someone infirm had the function of buying-back sins because they were humble. It was also a good way to assure salvation and social recognition among the wealthy. Saint Eligius justified this by stating that "God made the poor so that the rich could buy back their sins". Malformation was the result of unfathomable divine will, so there was nothing to worry about. It did not attract fear or rejection; it was an integral part of society. To be poor or infirm in the middle Ages therefore meant living, or indeed surviving due to assistance from family, neighbours, or thanks to parish charity.

However, some of the infirm did not belong to a parish. These roamed from town to town and went off on the roads, sometimes accompanied, so as to visit holy places that would provide them with a cure. In this way, Jerome Bosch in his painting entitled "The Ship of Fools" depicts this odyssey, imprinted at the same time with rejection. We discover here a "drunken boat" where the senseless wanderers, rejected from town after town, cohabit.



ILLUSTRATION 1: JEROME BOSCH "THE SHIP OF FOOLS"

From the 14th century on, fear overtook this charitable attitude and led to first the marginalisation and then the confinement of this composite population of paupers and social outcasts, notably the infirm and mentally deficient. Peter Bruegel wanted to depict poverty and entitled his painting “lies proceed like the cripple on crutches”. In the first place, it was the relatives who undertook the responsibility of caring for the disabled and down to them to pay the fees when they were committed to a hospital.



ILLUSTRATION 2: BRUEGEL THE ELDER "THE BEGGARS"

If the relatives were unable to do their duty, this responsibility passed on to the communes, because it was the norm, already by the end of the Middle Ages, that they would provide for the needs of the destitute.



ILLUSTRATION 3 : BRUEGEL THE ELDER "THE FIGHT BETWEEN CARNIVAL AND LENT"



ILLUSTRATION 4: JACQUES CALLOT "THE HOODED CRIPPLE (1621)

The beginnings of the state recognising its responsibility for the costs of assistance were taking form. It was in Lyon that the first actions aimed at the confinement of the poor took place, in 1631, where “thousands of people gathered together” were welcomed to the Hôpital de la Charité: “the work is not excessive there, but enough to prevent idleness”. Some years later, Marseille, Nantes and Rouen planned to gather “the poor who wander about the city” into existing hospitals and also a special tax to cover the logistics of this, while in Paris the number of able-bodied beggars and wandering vagrants in the city was estimated at 40,000. However, the efforts to cleanse the streets of beggars, even infirm ones, by encouraging them to work, by confining them away in hospitals or by sending them back to their commune to receive some modest support there, had little success: begging remained, for many disabled people, the only way to survive.

The Contribution of the French Revolution

During the Enlightenment, the influence of new philosophical theories and the advances in scientific knowledge allowed the problems posed by the education of children or adults afflicted by sensory deficiencies to take centre stage. In the 18th century under the impetus of the great thinkers of the Enlightenment, the abilities of the infirm were recognised and indeed the disabled person was recognised as a political subject. In 1749, Denis Diderot published his “Letter on the Blind for the Usage of Those Who Can See”, a work that brought about his imprisonment in Vincennes, for several months. In 1785, on rue Coquillière in Paris, Valentin Haüy opened the first free school for young blind people, both boys and girls, at his own expense. In 1790, the principle of the Nation's

duty of care was affirmed before the Constituent Assembly, by the Committee on Begging which was presided over by La Rochefoucault-Liancourt. These advances demonstrate “on the one hand, the inherent responsibility in the system of social organisation [...] and on the other hand, the role of social agents, both disabled and able-bodied, in establishing reciprocal links in order to remodel and transform social relations. To put it another way, being disabled would no longer be part of human nature, determined by genetic, physiological or physical data, but part of culture, that is to say in the relations that individuals consciously or unconsciously maintain with the social environment”.¹⁶



ILLUSTRATION 5 : GEORGES COUTHON'S WHEELCHAIR"

As time passed, the general evolution of policies aimed at Disabled People has allowed society to move progressively from charity to non-discrimination.

¹⁶Gilles Bui-Xuân, Roy Compte and Jacques Mikulovic, La culture du handicap peut-elle être une culture du métissage ? », *Corps et culture* [En ligne], Numéro 6/7 | 2004, published online on 29th May 2007, Consulted on 5th September 2014. URL : <http://corpsetculture.revues.org/839>



ILLUSTRATION 6: THE PITIÉ-SALPÉTRIÈRE AT THE END OF THE 17TH CENTURY, H.GOURDON DE GENOUILLAC

During the year of 1779, in his speech addressed to the Royal Society of Agriculture of Soissons, the Abbot of Montlinot¹⁷ speculated on the ways to destroy begging, to make the able-bodied poor useful and to rescue them. “There is no question more important than that proposed by the Royal Society of Agriculture of Soissons: this Society asks that I turn my attention to the relief of the poor [...] I will not turn you away, o my brother! [...] I will not cover you with the livery of opprobrium, [...] let us no longer leave alms for the poor and let us destroy the hospitals! How do we make beggars useful without making them unhappy? Let us no longer demand common labour from the poor person for the benefit of charitable organisations; let us support the industrious hands of the destitute and let us allow them to enjoy their existence, a pure air and their freedom”. He took a stand against the creation of hospitals by Louis XIX who always preferred “the splendour of the throne to the material reality of the people and piled up three thousand disabled and able-bodied beggars beneath it”.

Between 1789 and 1793, the idea that the “poor man”¹⁸ had a right to assistance, in return for the right to property that he could not exercise in

¹⁷The Abbot of Montlinot (1732-1801) was Canon of the Collegiate Church of St. Pierre and a historian of the city of Lille.

¹⁸ Bloch Camille, Tuetey Alexandre, « Premier rapport du Comité pour l’extinction de la mendicité présenté à l’Assemblée nationale par M. de Liancourt », in *Procès-verbaux et rapports du Comité de mendicité de la Constituante (1790-1791)* Paris, Imprimerie nationale, 1911, p. 328.

practice, became consensual. On May 30th 1790, the principle of the Nation's duty of care was affirmed for the first time before the Constituent Assembly, by the Committee on Begging which was presided over by La Rochefoucault-Liancourt. The beneficiaries of aid were strictly defined and on this point, there was little progress from the Ancien régime. The report carried out in the name of the Committees on Relations, on Begging and on Research into the Begging Situation in Paris “had the objective of coming to the aid of people of any age, in any part of the kingdom, in situations of destitution, weakness and infirmity”. To clarify a little further than “if in the implementation of our decree, the order to stop any able-bodied beggar who refused to work [...] we do not include them, or the sick, or the infirm to which we assign individual care and attention”.

Preceded by the Act of Ventôse II (passed on 26th February 1794), the Act established the “right to assistance recognised by the Declaration of Rights of June 1793: free medical assistance, disability and old-age pension, and support for large families”¹⁹. The decree of 11th May 1794 was comprised of 5 sections, 53 articles in all!

From the end of the 19th century, industrialisation, with its unregulated character and its pace of work provoked a huge spike in those injured in the workplace. Workplace accidents were constant, particularly down the mines. The industrial revolution multiplied these accidents with the use of machines and the concentration of men in sites that often exacerbated catastrophic situations. The mining catastrophe at Courrières in the north resulted in 1,200 deaths in 1906. In France, for example, there were 2,395 deaths in 1909 and 434,310 injuries. A massive debate then took place in the Chamber of Deputies and over the course of eighteen years, a series of projects were presented, debated and voted on which were always modified or rejected by the Senate, culminating eventually in the 1898 Act. But throughout the 19th century, workplace accidents posed difficult legal problems, because such events were involuntary and unforeseeable, hard to distinguish from coincidence or force majeure, but resulting from human activity and occurring in an environment created by man and within his power to modify. Indeed, the secularisation of

¹⁹ Soboul, Albert, *Portraits de Révolutionnaires*, Messidor/Éditions sociales, 1986, p.232

society had sent into retreat the “medieval idea according to which any misfortune is the punishment of sins committed by the individual who can thus not escape from accident or malady other than by leading a pure life or by a sincere repentance allowing a miraculous salvation” [...] “with the retreat of religion, accidents became a foreseeable and calculable risk”²⁰. They appeared therefore as resulting from personal action and called for reparation²¹. The jurisprudence of civil tribunals was obliged to find solutions to the problems that emerged.

The Act of 1893, preceding the Act of 1905, for destitute patients was already considering this idea of assistance as justice. It made assistance a legal obligation of the communes, the departments and the state; it recognised “implicitly a right to assistance”²² which was substituted for familial obligations. The Act of 1905 rests as well on the fundamental idea that “assistance for the elderly, for the infirm and for the incurably ill is not simply an act of kindness from the community, but the settlement of a positive obligation; what is more, the person who claims this assistance and fulfils all the legal conditions for it is armed with a real right whose exercise must be guaranteed: they are not appealing to charity, but to justice”.

However it was at the end of the 19th century, and in fact above all during the 20th century that the contemporary structures aimed at guaranteeing economic security for individuals and protecting them against illness, infirmity and poverty would emerge.

As such, before the 20th century, disabled people were essentially considered as unfit, and therefore marginalised, even excluded from society. The duty of care was limited to financial and medical assistance

²⁰ Hesse Jean Philippe, *Le nouveau tarif des corps laborieux*, in Le Crom Jean Pierre, (under the direction of), *L’histoire par les lois*, Paris, Editions de l’atelier, 1988, p 89.

²¹ The problem was dealt with simultaneously in all the industrialised countries: Germany, Switzerland, Austria, England, Russia, Italy, the United States, etc... The German experience instituted by an Act in 1884 would play a decisive role as a point of reference in all the debates.

²² Faure Olivier, *La médecine gratuite au XIXème siècle : de la charité à l’assistance*, in *Histoire, économie et société*, 1894, Volume 3, p 602.

aimed at lessening the consequences of a limited autonomy. For the historian Henri-Jacques Stiker, the context of surging industrialisation accelerated the problem of workplace accidents. In order to face it, “henceforth there will be an obligation to make reparation, and later compensate, the expectations that the risks of labour have produced and this no longer applies solely to business owners, but to the entirety of the national community. We will progressively think about restoring victims of workplace accidents to their previous social and economic position”²³.

Applicable French Laws and Global Issues

Two other texts, published in 1957²⁴ and in 1963²⁵, enshrined the extension of this logic of assistance while also seeking, however, to granting potential access to social activities, notably in the form of expanding education obligation for infirm children. If the notion of integration was underlying without being fully explicit, the status which was accorded to the disabled, who went from being incapable to reteachable, seemed new.

²³ Stiker Henry Jacques, « Aspects sociohistoriques du handicap moteur », in Association des paralysés de France, *Déficiences motrices et situations de handicap. Aspects sociaux, psychologiques, médicaux, techniques et législatifs, troubles associés*, APF, 1996.

²⁴ Act of 23rd November 1957.

²⁵ Act of 31st July 1963.



ILLUSTRATION 7 : SOURCE GALLICA.BNF.FR

This second period was concluded by the adoption of the Act of 13th July 1971 with regard to the diverse measures in favour of the disabled, the forerunner of the Act that would become law in June 1975, opening up a new political perspective, that of the rights of the disabled person: a right to equality and a right to integration.

FRANCE TODAY

Positive French law, “the heir to a triple tradition whose significance can be seen everywhere, throughout the centuries and in countries the world over” [...] the first is that of reparations for bodily damage by the third-party responsible, born out of the substitution of a payment of compensation in cash instead of the application of the law of Talion.²⁶ The second is that of assistance for invalids which has seen remarkable development, particularly in Ancient Greece²⁷ with underlying ideas of recompense (for invalid former soldiers) or of reciprocity. The third is that of a duty to help the destitute inheritors of the Christian society of the Middle Ages^{28, 29}.

²⁶ Docteur Achille Geerts, *L'indemnisation des lésions corporelles à travers les siècles*, Paris, Librairies techniques, op. cit.

²⁷ Speech of Lysias, *For the Invalid*, 400 BC, cited in : *l'indemnisation des lésions corporelles à travers les siècles*, op. cit.

²⁸ Alfandari Elie, *aide sociale - action sociale*, Paris, Dalloz, 2^{ème} édition 1977.

French legislation was then organised around four fundamental principles:

- Civil responsibility
- Systems of social security and reparations for certain social dangers
- Reparations for the consequences of the dangers of war
- Social security benefits

Finally, the term “disabled” took the place in legislation that it already had in everyday language with the policy act in favour of disabled people of 30th June 1975. In actual fact, the act contained two sections whose coherence was far from obvious: defining a social action policy in favour of disabled people, adults and children – measures for assistance with the objective of improving the lot of the most disadvantaged disabled people. The first section retained situational disability even if it spoke of physical, sensory or mental disability. The second referred to the cause of disability by demanding a widened access to social security benefits. The Act of 30th June 1975 proclaimed, besides the right to the guarantee of a minimum amount of benefits, a certain number of specific rights: the right to medical care, the right to education, the right to professional training and development, the right to work, the right to social integration and the right to access sports and leisure activities. The intention was to grant to the disabled person the liberty to behave like a full citizen of the national community: the ability to move freely which already involved general measures aimed at public buildings, installations open to the public (such as sports facilities). “The prevention and detection of disabilities, care, education, professional training and development, work, guaranteed minimum benefits, social integration and access to sports and leisure activities for both minors and adults who have physical, sensorial or mental disabilities constitute a national obligation” (Article 1). “The architectural layouts and arrangements of accommodation and installations open to the public, notably places of education including schools, universities and further education centres, must be such that they are accessible to disabled people” (Article 49). As well as measures aimed at facilitating the

²⁹In handicap et droit " Centre technique national d'études et de recherches sur les handicaps et les inadaptations Colloque A.D.E.P. 24.25.26 novembre 1983.

movements themselves: “In order to facilitate the movements of disabled people, provisions are being taken by regulation to adapt public transport services or to progressively adapt the construction standards of public transport vehicles, as well as the conditions for accessing these vehicles, or even to facilitate the creation and the functioning of specialised transport services for disabled people or, failing this, the use of individual vehicles” (Article 52). The Act of 30th June 1975 affirmed and crystallized the perception of the notion of disability by speaking of “invalidity”, in direct relation to an illness, in terms of dealing with disabling situations, in fact therefore as “a social product”³⁰. It no longer classified by means of deficiencies but examined relationships and interactions with social conditions. It was the culmination of a long process whose origins we might situate at the end of the 19th century. Without proposing a definition of disability, it endeavoured to integrate a non-restrictive concept of the condition.

The period of 1981 to 2002 seems characteristic of a certain “disinterest” in the question of sporting activities aimed at disabled people. There were in fact no more than “8 instructions issuing from the central administration which mentioned disabled access to sporting activities”³¹. All the same, demonstrating the multiple concerns and consequently the social dimension of disability, the question of sport was considered by several committees: the Sports Committee (2/8), the Delegation for Employment and Training (1/8), the Administration and Staffing Committee (1/8), the Public Education and Youth Committee (1/8) and the Cabinet (3/8)³².

Three circulars (published in 1982 and 1983) related to the implementation of a policy of integration in favour of disabled children and teenagers stated that “the project of integration is not limited to the educational sphere, but must also take into account all of the situations experienced by disabled children and teenagers within and around the school. This also goes for extra-curricular activities, leisure activities,

³⁰ Doriguzzi Patrick, *L’histoire politique du handicap. De l’infirmes au travailleur handicapé*, Paris, L’Harmattan, 1994.

³¹ Martel Ludovic, *les politiques d’insertion par le sport du MJS entre 1981 et 2002*, Paris, Connaissances et savoirs, 2010, p202.

³² Martel Ludovic, *op. cit.*, p 209.

physical education and sport, cultural activities... furthermore these extra-curricular activities encourage the opening out of structures and may in certain cases help with the implementation of the project of educational integration”. They preceded the Avice Law which stated, in the 1984 version³³, that “physical activities and sport constitute an important factor in the equilibrium, health and fulfilment of each person; they are a fundamental element of education, culture and social life. Their development is in the general interest and their practice constitutes a right for each person regardless of their sex, age, capacity or social status” and that “in the establishments pertaining to the ministry of national education and in specialised establishments, disabled pupils and students benefit from the teaching of physical education and sport depending on their particular needs”. For the first time, in this kind of law, disabled people and “special measures of adaptation” were mentioned.

When asking the government on 4th July 1988 about the policies regarding sport and disability, Mr Michel Pelchat, the then representative for l'Essonne received the following response: “The Secretary of State for Youth and Sport attaches a very specific importance to the development of sport for all and notably for disabled people for whom sport constitutes a privileged mode of social integration. To this effect, and in concert with the other ministerial departments concerned, the ultimate aim of the policy of the Secretary of State for Youth and Sport is to encourage: the organisation of combined events open simultaneously to able-bodied and disabled people but also the development of specific events; the opening out of sports associations to disabled people both in particular divisions affiliated to specific federations and, by integration, where the disability allows for it, in ordinary sports divisions; the training of senior staff in the APS for disabled people; the organisation of sports equipment to facilitate access for disabled people”. However, nothing was enacted at the meeting of 13th January 1989 “The national commission of elite sport has decided, at its meeting of 13th January 1989, to bestow an exceptional personalised benefit to athletes who have

³³Law no. 84-610 of 16th July 1984 in relation to the organization and promotion of physical activities and sports.

achieved a medal at the Seoul or Calgary Olympic Games. This measure only concerns Olympic events, and excludes exhibition sports and disabled sports at the Paralympic Games”. Effectively, an able-bodied athlete would be awarded the sum of 250,000 francs for a gold medal whereas disabled athletes would only earn 10,000 francs, or 1/25th. Discrimination of this nature was particularly poorly-received by those athletes who had to overcome significant difficulties in their preparation, notably finding training facilities adapted to their needs. All the more so given that the law of 16th July 1984 in relation to the organisation and the promotion of physical activities and sport stated in its first article that “physical activities and sport constitute an important element of education, culture, integration and social life. They also contribute to health. Their promotion and development is in the general interest”. In any case it did agree “to highlight the significant effort of 2 MF committed by the state to finance the preparation and participation of the French delegation of disabled athletes to the Olympic Games in Innsbruck and Seoul”. The creation of PRNSH and of the “disability and sport” network must have gone some way to resolving the problems of accessibility: “With regard to the “sport and disability” network, five measures will enrich this body from this year. The first is the creation of the post of National Coordinator of “disability and sport”. Their role will be to relay the implemented ministerial imperatives to the national level, to oversee the network of regional correspondents and to allow them to get training and information. A national centre for “disability and sport” resources, through which disabled athletes and the disabled public will find help, advice, tools and professional networking opportunities, emerged on 1st September 2003 at the CREPS of the Centre. In addition, an adviser on sport and disability has been designated at the heart of every regional administration and establishment”. However, the issue does not appear to be fully resolved. The fears linked to accessibility of places and equipment continues to appear as being “so many obstacles to the exercise of physical activities and sport” as well as the absence of reimbursement for orthopaedic equipment linked to certain sports. “Effectively, certain disabled people, afflicted by a foot condition, may however do certain sports, such as climbing or diving. However, social security does not reimburse the price of specialist shoes, while the required equipment sometimes extends to two pairs, each foot requiring

a different size. Doing a sport, so useful for the conservation of morale and physical fitness amongst this group, is very onerous for the majority of them, where their income is modest” recalled Jean Pierre Fouché in his question to the government of 17th October 1988.

Act of 11th February 2005

Even if the idea of disability did exist legally speaking, it did not in the penal code. No particular status was conferred on a disabled person by the texts. It substituted the idea of “the disabled person” for the idea of “the person in a situation of disability”. It emphasised the environmental conditions of disability: a social regard for disabled people, regardless of their organisation. The Act of 2005 had the distinction of proposing a definition of disability for the first time in the history of French legislation, which deserves to be quoted in extenso: “There constitutes a disability, in the sense of the present Act, any limitation of activity or restriction to the participation in social life in their environment incurred by a person owing to a substantial alteration, final or lasting, to one or several of their physical, sensory, mental, cognitive or psychic functions, owing to multiple disabilities or owing to a health problem that causes invalidity”. Diverse aspects of social life were used to account for diverse disabilities, etc. Defining the conditions surrounding the appearance of the disability was essential: for example, the same motor disability that obliges someone to use a wheelchair in order to move freely does not have the same consequences depending on where they live in Paris or in certain provincial towns that are well-organised in order to facilitate the movements of this type of disabled person. However, the attempts to reduce disability to a question of social regard, and by the same token to make it solely an issue of discrimination among others, “seems to bring together multiple forms of denying disability, certainly understandable to the people directly concerned, but nevertheless unfounded, and psychically very damaging, like all denials”. Furthermore the law stated in Article 114-1 that “Any disabled person has the right to the solidarity of the whole of the national community, which guarantees them, as a result of this obligation, access to the fundamental rights recognised by all citizens as well as the full exercise of their citizenship”. In this way the Act recognised the right of people in a situation of disability to participate in civic life.

The conclusion of three years of thought processes shared between successive governments, Parliament and the associations, requiring 138 decrees or other types of measures, the Act of 11th February 2005 for the equality of rights, opportunities, participation and citizenship of disabled people utterly transformed politics to the benefit of disabled people by stating the outlines of this new right to compensation, defining the methods of their consideration within national solidarity and redefining a new policy on disability, was founded on four pillars. It proposed a definition of disability that, for the first time, integrated all the forms of deficiency (physical, sensory, mental, cognitive, psychic) and went beyond the strictly medical approach by underlining the role of environment in the constitution of the disability: “Article L. 114.- There constitutes a disability, in the sense of the present Act, any limitation of activity or restriction to the participation in social life in their environment incurred by a person owing to a substantial alteration, final or lasting, to one or several of their physical, sensory, mental, cognitive or psychic functions, owing to multiple disabilities or owing to a health problem that causes invalidity”.

By modifying the article (Article L. 114-1-1 of the Social Action and Families Code) a right to compensation for the consequences of a disability was enshrined, its basis “the life project” of the disabled person: “The disabled person has the right to compensation for the consequences of their disability regardless of the origin or nature of their deficiency, their age or their lifestyle. This compensation consists of a response to their needs, whether they are childcare facilities, schooling, teaching, education, professional integration, adapting their home and work environment to their needs [...], the development or the organisation of the offer of service [...], help of any nature for the person or for the institutions to live in an ordinary or adapted environment [...] the needs of compensation are recorded in a plan developed by considering the needs and aspirations of the disabled person as they are expressed in their life project, formulated by the person themselves or, failing this, with or for them by their legal representative where they are unable to express their opinion”.

Furthermore, it stated through Article L. 114-1 of the Social Action and Families Code that disabled people would have “access to everything for everyone” and to all the fundamental rights recognised by citizens: “The

disabled person has the right to compensation for the consequences of their disability regardless of the origin or nature of their deficiency, their age or their lifestyle.” ... “This compensation consists of a response to their needs, whether they are childcare facilities, schooling, teaching, education, professional integration, adapting their home and work environment to their needs in full exercise of their citizenship and their capacity for autonomy, the development or the organisation of the offer of service, notably allowing the entourage of the disabled person to benefit from some respite, the development of groups of mutual assistance or places in specialised establishments, help of any nature for the person or for the institutions to live in an ordinary or adapted environment, or also in the matter of access to specific procedures and institutions for disability or to means and benefits accompanying the implementation of the legal protection governed by Title XI of Book 1 of the Civil Code”. These adapted responses took into account the necessary accommodation and accompaniment for disabled people who could not alone express their needs. “The needs of compensation are recorded in a plan developed by considering the needs and aspirations of the disabled person as they are expressed in their life project, formulated by the person themselves or, failing this, with or for them by their legal representative where they are unable to express their opinion”. The implementation of a new governance, tightly associated with disabled people and their representatives.

Composed of 101 articles, the 2005 Act constituted a highly ambitious reform of disability policy because it attempted to cover all the aspects of a disabled person's life, whatever their age. This cross-sectional approach was at once its strength and weakness, because it demanded a significant amount of work to direct and apply it such that, seven years after its adoption, it still had not been completed. In view of the immense hopes it had inspired among disabled people and their families, the Senate Commission for the Control of the Application of Laws had wanted to know to what extent the statement of credit rights had translated or failed to translate through the enactment of effective rights. Whether in the domain of compensation, education, labour or accessibility, it appeared that the reality on the ground was sometimes far distant from the spirit of the Act. Effectively, the application of such an ambitious law naturally demanded a significant number of implementing provisions: 138 decrees

or other types of regulatory measures were expected. The Blanc Report stated in 2007 that 120 modifications had been made and that 90% of these had been favourably received by the National Consultative Committee for Disabled People.

In Article L. 112-1 of the Code of Education, the Act of 11th February 2005 clearly formulated the existence of the right to schooling in an ordinary environment: “The public education service will oversee schooling, professional education or higher education for children, adolescents and adults who present a disability or are invalids due to a health problem. In its areas of competence, the state will put in place the financial and human resources necessary for the schooling of children, adolescents and adults in an ordinary environment. Any child or adolescent presenting a disability or invalid due to a health problem will join the nearest school or educational establishment to their home, as mentioned in Article L. 351-1, which will constitute their establishment of reference”. Schooling in an ordinary environment then became a common right. As Sophie Cluzel, President of the National Federation of Associations in the Service of Students Presenting a Disability (FNASEPH), “disabled children will henceforth benefit from a presumption of competence”. Other methods of schooling could in any case be envisaged when the needs of the child required it. In this way, the “Disability” Act foresaw the possibilities of schooling or teaching in a manner both permanent and ad hoc within adapted structures, as well as how to organise educational conditions.

Current Situation and Prospects of the Act of February 2005

There can be no doubt that, even if Paul Blanc observes that “mentalities are changing”, the results are in contrast but “the law initiated a brand-new dynamic and considerable efforts have been deployed, notably at local level, to make the major principles applicable”, even if Law No. 2000-627 of 6th July 2000 related to the organisation and promotion of physical activities and sport stated that “physical activities and sport constitute an important factor in education, culture, integration and social life. They also contribute to health. Their promotion and development is in the general interest” and already allowed sports associations that organised physical activities and sport to benefit from aid from public

authorities in the matter of doing sport, accessing sports facilities, organisation of competitions, training sport instructors and adaptation of transport. It stated in Article 21 that “the organisation and development of physical activities and sport in companies and in specialised establishments accommodating disabled people are the object of adaptations” and to this end contributing to the mission of general interest they “may benefit, subject to the approval mentioned in Article 8, from aid from public authorities, notably in the matter of doing sport, accessing sports facilities, organisation of competitions, training sport instructors and adaptation of transport”.

Currently there are sixteen CREPS (twenty sites), three schools and the INSEP which constitute the capacity in France for welcoming athletes. The function of the CREPS is to “participate in the athletic preparation of elite athletes and the training of agents from different public communities and professional associations, contribute to the running of regional sport, undertake research and study and support the development of social communication” (Decree 86-581 of 14th March 1986, Article 4). The level of accessibility to these establishments varies to a high degree according to the type of disability, with efforts to improve accessibility largely bearing on people with reduced mobility, rather than those with a sensory or mental disability. If very few of the CREPS are independently accessible to the visually-impaired, a large number of establishments do demonstrate an excellent level of accessibility. The CREPS in Bourges, inaugurated in 2004 and with the idea of accessibility integrated throughout the construction project, is entirely accessible not only to those with reduced mobility but equally to those with sensory disabilities. The same applies to the INSEP, totally accessible to people with reduced mobility in its refurbished areas with plans to extend this throughout once the renovation of the sports facilities has been completed. The CREPS in Nancy and Reims are also almost entirely accessible to people with reduced mobility. Even if the conditions of welcoming athletes are still not optimal, it is already possible, in the majority of the establishments, to accommodate members of the public in a situation of disability.

In 2011, 80% of establishments housed the centres of the disability sport federation and the adapted sport federation or accommodated placements from these federations or other members of the disabled public.

However, despite the legislative framework reinforced by the 2005 Act, 50% of French people continue to feel that the overall situation has not evolved, that their community is backward on the issue of integrating disabled people and particularly so when it comes to people with mental or cognitive disabilities. The legal framework established by Law No. 2005-102 of 11th February 2005 for the equality of rights, opportunities, participation and citizenship of disabled people still has not “exhausted its potential” stated Jean-Yves Hocquet in his April 2012 report.

References

- Achille, G. (1962). *L'indemnisation des lésions corporelles à travers les siècles*, Paris, *Librairies Techniques*
- ATHENEU (2004) Clinical evaluation and assessment of the fitness of the Brazilian Para Olympic Athletes : concepts, methods and results.- Atheneu
- Auger, Gabriel (2001) *Le développement des activités physiques et sportives mention activités physiques adaptées.*
- Brunet, François, Mautuit, Dominique (2003). *Activités physiques adaptées aux personnes déficientes intellectuelles, du programme institutionnel au projet personnalisé.*- Paris : Revue EPS.
- Camille, B & Alexandre, T. (1911) *Premier rapport du Comité pour l'extinction de la mendicité présenté à l'Assemblée nationale par M. de Liancourt* », in *Procès-verbaux et rapports du Comité de mendicité de la Constituante (1790-1791)* Paris, Imprimerie nationale.
- CTNERHI (2007). *Les politiques à l'égard des personnes handicapées dans les pays de l'Union Européenne : vers une dynamique d'inclusion.*- CTNERHI
- CTNERHI (2007). *Guide Néret: droit des personnes handicapées 2007.*- Groupe Liaisons SA.
- CTNERHI, *Guide Néret (2004) Droit des personnes en situation de handicap 2004.*- Editions Liaisons
- Educasport (2003). *Pour des réponses concrètes pour la mise en œuvre de politiques locales de prévention par le sport.*- Ministère de la Jeunesse des Sports et de la Vie Associative / CNOSF
- Elie, A. (1977). *Aide sociale - Action sociale*, Paris, Dalloz, 2^{ème}

édition.

- Evelyne, S., & Bons (2010). pour le service, in Collard Franck et Samana Evelyne, (under the direction of), *Handicaps et sociétés dans l'histoire*, Paris, L'Harmattan.
- FFSA (1998). Les actes des journées d'échanges, deuxième journées nationales d'échanges en activités motrices.- Paris : FFSA Fédération Française de Sport Adapté
- Gaillard Joël, Andrieu Bernard (2006). Vers la fin du Handicap ? , Nancy PUN
- Gaillard Joël, Pratiques (2009) sportives et handicapés, ensemble « sportons » nous bien, Lyon Chronique sociale.
- Grosbois, Louis-Pierre (2006). Handicap et construction.- 6e édition.- Paris : Le Moniteur.
- Henri-Jacques, S. (2000). Pour le débat démocratique : la question du handicap.- Editions du CTNERHI
- Henri-Jacques, S. Laurière, François ; Rossignol, Christian ; CTNERHI (1998).les mots du handicap... le maquis de la terminologie : de 1940 à nos jours, CTNERHI,
- Henry-Jacques S. (2006). Les fables peintes du corps abîmé, Les images de l'infirmité du XVIème et au XXème siècles, Paris, Ed. du Cerf.
- Joseph-Marie, G. (1839). *De la bienfaisance publique*, Paris, Jules Renouard et Cie, Tome III
- Lucas Philippe (2002) L'enseignement du ski de piste aux personnes handicapées mentales. Une prise en charge spécifique pour un public particulier..- Paris : FFSA Fédération Française de Sport Adapté.
- Ludovic, M. (2010). Les politiques d'insertion par le sport du MJS entre 1981 et 2002, Paris, Connaissances et savoirs.
- Marcellini, Anne, Banens, Maks (2003). Pratiques Sportives et Personnes Handicapées en France, Université Montpellier.
- Patrick. D., (1994) L'histoire politique du handicap. De l'infirme au travailleur handicapé, Paris, L'Harmattan.
- Philippe, H. J. (1988) Le nouveau tarif des corps laborieux, in Le Crom Jean Pierre, (under the direction of), *L'histoire par les lois*, Paris, Editions de l'atelier.
- Porte, Bernard, Franc-Valluet, François-P. (2004). Le guide pour

- l'accueil et l'accessibilité des personnes en situation de handicap au sein de structures nautiques de voile.- Fédération Française du Sport Adapté.
- Puvinel, Francis (1997). Les activités physiques et sportives adaptées dans les établissements de l'ADAPEI. Analyse psychosociale des contraintes et des menaces. Propositions organisationnelles et stratégies de transformation des représentations.- Université Blaise Pascal, UFR de Psychologie.
- Rossignol Jean, Renier Louis Michel (2004). Les personnes handicapées : des citoyens.- Paris : L'Harmattan.
- Sanchez, Jésus (1989). L'accessibilité, support concret et symbolique de l'intégration.- Editions du CTNERHI.
- Smedley Geoff (2002). Coaching people with learning disability.- London N1 3QP : United Kingdom Sport Association for People with Learning Disability.
- Soboul & Albert (1986). *Portraits de Révolutionnaires*, Messidor/Editions sociales.
- Tuffreau, François ; Le Guével, Annie (2007) Dictionnaire de l'organisation sanitaire et mé dicosociale.- Editions ENSP.