12 People with Disabilities

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1. The Disability Problem

1.1 Seeking the Right to Be in the World

Writing two years after the passage of the US 1964 Civil Rights Act,¹

¹ In understanding claims about the rights of people with disabilities, it is important to distinguish between civil rights and entitlements to benefits. The relationship(s) between these two sorts of claims is a matter of important philosophical disagreement. Among nations with an English law system, US law most clearly distinguishes civil rights from welfare system benefits. For this reason, developments in US law, culminating in the adoption of the Americans With Disabilities Act (ADA) in 1990, are emphasized here. Of course, the USA is not the only nation where disability rights are of concern. Influenced to some extent by the ADA, Australia adopted a Disability Discrimination Act (DDA) in 1992, and the UK adopted a Disability Discrimination Act (DDA) in 1995. The Canadian Charter of Human Rights brings disabled people under its broad guarantee of equality for all, but leaves it to courts to interpret the provision’s scope. Disability discrimination law in Australia, Canada, and the UK relies more on arbitration and conciliation than US law does. Like Canada, Poland, the Netherlands, and Uganda have constitutional guarantees of equality for disabled people. France and Germany make special arrangements placing the disabled in the workforce. Japan and China base nonenforceable antidiscrimination provisions on the United Nations’ Standard Rules for Equalization of Opportunities for People with Disabilities, which also are not legally binding. The delineation of civil rights from welfare entitlements is useful in sorting out claims about disability rights in all these systems, regardless of their differences in regard to the legal status of disabled people.

Jacobus tenBroek argued that ‘nothing could be more essential to personality, social existence, economic opportunity... than... the legal right to be abroad in the land.’

(1966: 842). TenBroek held degrees from the law schools at Harvard and Berkeley, had taught at the University of Chicago’s law school, and was a tenured UC-Berkeley professor when he wrote the classic law review article entitled ‘The Right to Be in the World’. Despite his status as a nationally acclaimed legal scholar, tenBroek himself had no legal right to be abroad in the land. In virtue of his being blind, his claim to the right to be in the world was unrecognized in law and in life.

Simply because he was blind, tenBroek had no legal recourse when restaurants declined to serve him, or banks refused to let him deposit his money, or he was denied carriage on a train or plane for which he had purchased a regular ticket. Regardless of his competence and accomplishments, he expected to be held the responsible party if, in traversing the university campus, he fell into any open pit thoughtlessly left unguarded by a repair crew or was injured in a collision with a recklessly speeding campus-owned vehicle. Because he was disabled, tenBroek had to absorb harms against which non-disabled peers were protected.

At the time when civil-rights protections were specified in statute for other minorities and women, the disabled had been passed over. Although tenBroek could not know it, the next two decades would witness many failed attempts to extend existing civil-rights statutes to safeguard disabled people. The reasons were both political and conceptual, with traditional civil-rights groups sometimes joining the usual opponents of government regulation to block adding disability discrimination to the list of offences against citizens’ civil rights (Burgdorf 1991).

Representatives of the groups protected under earlier legislation feared that opening it to amendments protecting the disabled might diffuse the focus of anti-discrimination enforcement. Moreover, some representatives of groups tradition-ally disadvantaged on the basis of race or sex simply could not conceive that people with disabilities were similarly mistreated (Burgdorf 1991). They thought of the disabled as being naturally deficient rather than artificially limited by biased social practice. They thought of disabled people as definitively incompetent, even while complaining about stereotyping when this same ascription was applied to women and racial minorities. To make disability a category that activates a heightened legal shield against exclusion, it was objected, would alter the purpose of legal protection for civil rights by transforming the goal from protecting opportunity for socially exploited people to providing assistance for naturally unfit people (Burgdorf 1991).

TenBroek showed that standards of care, conduct, risk, and liability for the disabled were inferior to those non-disabled people enjoyed (tenBroek 1966: 842). Such exclusions seemed to him inconsistent with the progressive policy President Johnson declared, and the Supreme Court affirmed, in supporting the Civil Rights Act, according to which denying equal access to public facilities to any group of citizens is a wrong and a burden on commerce. ‘According to the policy of integrationism, the disabled are not to be confined to their houses, asylums, and institutions—threatened, if they emerge, with not only social sanctions but legal sanctions as well, in the form of legal barriers, disadvantages, and inadequate
1.2 Historical Exclusion of People with Disabilities

The system of removing people from the community because they are disabled took hold in the USA in the middle of the nineteenth century. Before 1820, disabled people stayed with their families or found places elsewhere in their immediate communities. During the next forty years, however, residential schools meant to train these individuals so that they could be more productive sprang up, supported by charitable donations and government funds. Up until the US Civil War, these institutions focused on improving the skills and therefore the productivity of corporeally or cognitively impaired people, and on giving them access to the Bible and therefore to the word of God, with the goal of returning them to the community to earn their own livings (Trent 1994; Baynton 1996; Carlson 1998).

After the Civil War, residential schools evolved into custodial facilities comparable to those that had existed for centuries in Europe. Several contributing factors promoted the change. Waves of immigrants arrived to provide labour, making it harder for disabled people to support themselves. As more jobs were factory based, caring for an impaired family member interfered more and more with wage earning. So custodial institutions were enlarged to relieve private citizens of the burden of caring for the disabled (Trent 1994; Carlson 1998). These ‘homes’ then vigorously pursued the institutionalization of less impaired individuals who, once confined, spent their lifetimes being caregivers without remuneration for more seriously dys-functional inmates. For instance, when a new young superintendent had inmates at the Iowa Home for Feeble-Minded Children assessed in the early 1950s, he found more than fifty with normal IQs higher than some of the employees. They had been institutionalized because families, physicians, or public officials found their anomalies disturbing—for example, one had been institutionalized for sixty years because of his peculiar eyerolling (Trent 1994).

For a century, the custodial system went unchallenged. But in the mid-twentieth century images of its inhumanities were widely circulated by the media to the public. Just after the Second World War, Life magazine’s ‘Snakepit’ story revealed the horrors of the treatment of patients in psychiatric institutions with images reminiscent of photographs of Nazi concentration camp survivors. PM, a progressive New York daily, ran pictures of the horrors of Letchworth, an asylum for cognitively impaired individuals. A quarter century later, after the Civil Rights Act, the disgusting conditions of Letchworth persisted. Within a few months of being committed to the institution, all inmates contracted hepatitis because they were forced to live in each other’s excrement. Many similar exposes, illustrated with haunting images, appeared in printed or televised news throughout the second half of the twentieth century.

It took another quarter century, however, for the courts to affirm that this custodial system could be discriminatory as well as inhumane. In Olmstead v. LC (1999), the US Supreme Court was for the first time able to invoke an explicitly applicable federal civil-rights statute—the 1990 Americans with Disabilities Act (ADA)—in deliberating on this matter. In the Findings that preface the ADA, the Congress stipulates that ‘historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem’ (Americans with Disabilities Act 1990). Further, the ADA defines as discriminatory the failure to integrate dispensing goods and services to disabled people into their distribution to the broader public. Providing different goods or segregated services is non-discriminatory only if there is no other possible way to offer equally effective opportunity to a disabled individual.

In Olmstead v. LC, the court declared that ‘unjustified institutional isolation of persons with disabilities is a form of discrimination’ and that recognition of the discriminatory potential of the custodial system ‘reflects two evident judgments’. First, by confining individuals capable of living in the world to institutions and isolating them, the system perpetuates unwarranted assumptions about their capability and worthiness. Secondly, confinement deprives these individuals of family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment. If people with disabilities must relinquish participation in community life to receive services, but non-disabled people need not make similar sacrifices to receive equivalent services, the court ruled, dissimilar treatment of a discriminatory nature exists (Olmstead v. LC 1999).

Only at the end of the twentieth century did the statutory climate encourage the courts to recognize that segregating the disabled is discriminatory and that people with disabilities have the same right as other people to be in the world. In the USA, even in an era of substantial commitment to furthering civil rights, it took several decades to stimulate this process. Eventually, disability advocates abandoned efforts to integrate recognition of their rights into existing civil-rights statutes. They turned instead to laws specifically addressed to the disabled. That law-making process began with the Architectural Barriers Act of 1968 to mandate access to the built public environment and reached full expression in the 1990 Americans with Disabilities Act. Even so, the bias of which tenBroek complained has yet to be dislodged from the justice system. To illustrate, a 1999 law review article revisited the tort law issues tenBroek
addressed and concluded that the goal of integrating people with disabilities into society will remain a distant one because courts still do not comprehend what is entailed in the legal recognition of their right to live in the world (Milani 1999). Further, each year brings new political and legal action aimed at reducing their statutory protection.

### 1.3 The Conceptual Exclusion of People with Disabilities

TenBroek believed our political and legal practice should evolve to recognize the right of disabled people to full and equal places in the world. This proposal poses some enormous challenges to everyday thinking. The conceptual problems are as vexatious in the USA as in nations that do not have civil-rights traditions. Before we can fully embrace and apply the idea that disabled people are equal, we must eliminate bias from the ways we conceptualize and communicate about disability. The ways we currently think and talk about disability create barriers by making the integration of people with disabilities appear unattainable, unimaginable, or undeserved.

Our conceptualizations of disability lead us to speak or think as if being disabled were definitively bad. The source of the badness of disability commonly is thought to be its connection with physical, sensory, or cognitive impairments, those differences that mark the disabled as being other than species typical. But what do we mean when we talk about impairment? By definition, an impairment may be an absence, deletion, omission, reduction, or diminution. These states are anomalous in that they differ from what is typical, but anomalies are not necessarily harmful, disadvantageous, or otherwise bad.

However, an impairment may also be thought of as a weakness, inadequacy, or loss. In conceptualizing disability, we too easily slide down a slippery slope from attributions of anomalies to verdicts of badness. To characterize an anomaly as a weakness or loss improperly closes by definition what should be an open empirical process of particularized valuing, for whether a particular physical or cognitive difference is unfavourable should be an open question. Thus, the commonplace elision of the first meaning of 'impairment' with the second, so that the negative value of disability is assumed rather than investigated, is a source of bias.

Because listening, seeing, walking, and other such performances are common-place in most people's daily lives, we imagine that the sheer exercise of the faculties that support them necessarily gratifies us. From this assumption, we stray to the views that sight, hearing, and mobility are good in themselves, and, consequently, their absence constitutes a net loss of intrinsically valuable experience and a reduction of the quality of life. In this regard, it is argued that not being able to hear music or look at paintings is intrinsically bad. Yet no one questions the quality of life of the many non-disabled people who could enjoy these pleasures but pass them up. It seems biased to say forsaking these pleasures is deleterious to those who cannot experience them but indifferent to those who can but do not experience them.

There are other common ways of speaking that make it difficult for most people to talk about or think of a disability as anything but bad. To illustrate, genetic counsellors call the probability that a baby will have a disability a 'risk'. This rhetorical convention places prospective parents on the defensive if they do not display reservations about having such a child. They are expected to justify continuing 'risky' pregnancies that may result in children with disabilities, but the discourse does not equally require them to defend pregnancies with no such prognosis (Silvers 1998). In other words, the discourse exerts conceptual pressure by putting the parents on the defensive if they do not exclude the option of living with (a child who has a) disability.

A series of exchanges between philosophers Bryan Magee and Martin Milligan—published under the title On Blindness (Magee and Milligan 1995)—further illustrates the conceptual burden borne by whoever remains neutral about disability or questions the assumption that it is intrinsically bad. Magee wanted to discover whether someone like Milligan, blind nearly from birth and with no memory of seeing, can understand what visual language means and what is conveyed by other people's reports of visual experience. Magee hypothesizes that blindness is not just a sensory impairment, but a significant epistemic deficit as well.

Sight is useful, Milligan acknowledges. Nevertheless, he demonstrates that, despite his impairment, he can understand what is involved in, and is the product of, visual judgement: You seem to have found my claims that born-blind people can understand, at the very least, a major part of the meaning of visual terms, and that many sighted people grossly exaggerate the importance of sight, somewhat exasperating in their presumption because the sense of which they make overwhelmingly the greatest use is sight, sighted people just cannot imagine how blind people can manage without it. (Magee and Milligan 1995: 42–3) Magee, though, insists that whoever considers blindness a difference rather than a handicap is 'refusing to face the reality of his situation' (Magee and Milligan 1995: 99). He advances his case not through argument but by using rhetorical conventions that privilege the sighted over the blind. For him, people with disabilities must bear the burden of proving they are not incompetent. Magee never meets Milligan's argument that blind people enjoy a more comprehensive standpoint on the subject than sighted people: Whereas most sighted people will have known few if any blind people,
Does Disability Diminish Quality of Life?

The onset of disability can disturb the flow of individuals' lives. Such persons' distress is understandably magnified when they are subjected to biased conceptualizations that place them on the defensive, when their right to be in the world is ignored or denied, and when they must battle for recognition of their competence. They are also stressed by policies shaped by the assumption that to have a disability makes a person's life inherently less valuable.

For instance, in 1927, the US Supreme Court declared that the state has a legitimate interest in preventing the births of disabled people whose existence detracts from the welfare of the community (Buck v. Bell, 1927). As late as the 1930s, more than half the states in the USA had laws on the books encouraging sterilization of people with disabilities, usually those with developmental disabilities, but also those who were blind or deaf (regardless of whether their conditions were inherited or acquired). California's eugenic sterilization law may have inspired the Nazi programme of euthanizing members of these same groups (Kevles 1998: 3). In Western Europe, eugenic practices existed well past the half-century mark. The world has learned that programmes of sterilizing people designated as disabled accompanied the post-Second World War expansion of generous social service policies in Scandinavia and the Netherlands (Silvers et al. 1998).
These programmes, Kevles (1998: 3) reports, were predicated on the proposition that disabled people burdened the community by proliferating at a rate that placed great pressure on social resources and stability. In health-care practice, suggests bioethicist Leon Kass (1973: 400), a similar attitude propels the assumption that the lives of people with disabilities makes them burdensome to themselves. But it is illegitimate to assume that disability is necessarily burdensome. Despite the depleted opportunities they are offered, many disabled people equal or exceed the typical social contributions of non-disabled individuals. And, though impairments may preclude some activities, such limitations need not have a deleterious impact on people's well-being.

Not every limitation is a loss—and certainly not an intolerable loss. We know, for instance, that the absence of limitations can also lead to suffering. We may well be better off if we were to be focused on a few fulfilling options than tom with indecision by many gliterring ones. It is important to learn to overcome dis- advantageous circumstances when faced with limited, less than desirable, options. Because one has only one life to plan, the ultimate difference between having begun with a single, several, or many equally satisfying life-plan opportunities may be negligible.

It is thus problematic to identify disability with diminished worth of life. In fact, individuals who are experienced in living with a disability very often give a much higher rating to the quality of life disabled people can achieve than the non-disabled do (Murray and Lopez 1996). The difference that a person's standpoint

makes in how a health condition is experienced foregrounds an important issue about conceptual bias. ‘Many of the outcome measures (used in health services research) reflect the hegemony of providers' and payers' values', and only equivocally those of disabled people (Fuhrer 2000: 487). Constructing a univocal standpoint usually means defining away the perspectives of disabled people so that these have no weight within the assessment system. ‘These models do not lend themselves to providing a holistic portrayal of people's living with a disability’ (Fuhrer 2000: 483).

There are further problems with the way disability is assessed in health-care service allocation. Attempting to calibrate his disability-adjusted life year (DALY) scale, Murray reports that, if invited to choose between extending the lives of a larger number of blind people or of a smaller number of seeing people, most non-disabled people choose to benefit the larger group, suggesting that they assign the same value to each life whether the individual is disabled or not. (However, the same subjects think it more important to restore sight to a blind person than to extend a non-disabled person's life by a year.)

Murray interprets these results as incoherent, and therefore as of no relevance to the appropriateness of his scale. He thinks his respondents are claiming inconsistently that disabled and non-disabled people's lives are identically valuable, and at the same time that eliminating a disability, so as to transform a person from being disabled to non-disabled, makes that person's life more valuable (Murray and Lopez 1996: 36). As is characteristic of discussions about the distribution of health care, this interpretation of respondents' replies fails to distinguish between the burden of disability and the burden of life with disability. It is not inconsistent to think that being blind is a burden, an obstacle one must constantly work around, but that being alive (while blind) is not itself a burden, regardless of the challenges associated with being blind. Analogously, being poor usually is a burden but this does not entail that it is better not to live at all than to live with poverty.

Murray reminds us that the limitation associated with an impairment may differ depending on environment. The same impairment may be more or less disabling in an advanced technological society than in a simple rural one. For example, it is well known that mild mental retardation does not disable women in environments in which a woman's role is restricted to cleaning, cooking, and bearing children. Why, then, does Murray adopt a standard that imposes an identical assessment of the quality of life of all people with the same impairment, a standard that disregards the difference having a hostile or an accepting environment can make to their lives?

Remarkably, Murray's appeal here is to justice. It would be unjust to allocate resources to rich societies to prevent a type of impairment but not to poor ones, Murray believes, even though 'in many cases [programmes] to avert impairment could exacerbate inequalities' by eliminating disabled people from reproductive roles (Murray and Lopez 1996: 33). Yet surely there is nothing unjust in acknowledging that an impairment is no burden at all where it is not experienced as one.

Murray assumes that allocating more medical care always serves justice. But it is surely less just to treat people as dysfunctional when they actually are not than to

refrain from intervening where intervention harms them. Undergoing a medical intervention almost always costs the patient some pain and risk. A medical intervention is unlikely to be experienced as beneficial by individuals who were not dysfunctional prior to it and are no more functional, relative to their environment, as a result of it. To illustrate, adults with congenitally anomalous limbs, such as those occasioned

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For instance, Richard Hull examines the condition of disabled people in the UK. Like other nations, social arrangements in the UK are experienced by people with disabilities primarily to hostile social arrangements. The social model attributes the dysfunction deficits. This social model of disability transforms the notion of ‘handicapping condition’ from a biological state that disadvantages unfortunate individuals to a state of society that disadvantages an oppressed minority. The social model attributes the dysfunction experienced by people with disabilities primarily to hostile social arrangements.

2. Solving the Disability Problem

2.1 Models of Disability

The Medical Model

In our era, a medical model of disability has pervaded political, legal, and other thought as thoroughly as it has dominated health-care policy making. This model has important implications for the assignment of rights. According to it, people are disabled when they are biologically anomalous—when they are less functionally proficient than is typical for most humans. Norman Daniels puts it this way: ‘The basic idea is that... diseases (I here include deformities and disabilities that result from trauma) are deviations from the natural functional organization of a typical member of a species’ (1987: 302). The job of medicine then is to maintain or restore species-typical functioning.

This medical model is applied to defeat claims that disabled people have rights to equitable access to the opportunities of the world. It is not reasonable to expect such access in the absence of species-typical functioning. Daniels (1987: 302) claims:

Life plans we are otherwise suited for and have a reasonable expectation of finding satisfying or happiness-producing are rendered unreasonable by impairments of normal functioning... if people have a higher-order interest in preserving... opportunity... then they will have a pressing interest in maintaining normal species functioning by establishing institutions—such as health care systems—that do just that.

What could be a more natural, and modest, expectation on the part of an individual than the desire to function as her species typically does? Broad-based public support for policies that reduce whatever biological anomalies or singularities hinder adherence to the species-typical functional standard seems natural. As Tocqueville remarked, the inclination to create fair opportunity by levelling the players rather than the playingfields is a strong force in egalitarian societies. There is, nevertheless, an abiding question about the propriety of making homogeneity the price of opportunity. Normalizing policies can worsen the situation, or otherwise oppress, the very individuals they purport to improve by decreeing that inequality of opportunity is the unavoidable consequence of not functioning in the normal, typical, or customary way.

Daniels (1987: 303) supposes that an objective biological principle warrants restoring impaired individuals so that they function typically for the species. However, Ron Amundson challenges Daniel's view. According to him the idea of normal function has no foundation in objective biological fact because very large amounts of heritable variation occur in natural species (Amundson 2000a: 36). In modern biology dogmas about determine species design have given way to appreciation of rich ranges of variation. No nature-based justification underwrites making social justice conditional upon normality (or upon species typicality, which is often confused with normality). That there are average, common, or typical modes and levels of human performances does not make these the normal or natural modes and levels for humankind (Sober 1980).

The Social Model

The medical model understands the reduction of opportunity occasioned by disability in terms of the disabled individual's personal deficits, but people with disabilities often interpret their situation differently. They understand their limitations in terms of social rather than personal deficits. This social model of disability transforms the notion of 'handicapping condition' from a biological state that disadvantages unfortunate individuals to a state of society that disadvantages an oppressed minority. The social model attributes the dysfunction experienced by people with disabilities primarily to hostile social arrangements.

For instance, Richard Hull examines the condition of disabled people in the UK. Like other nations, social arrangements in the UK are
such that people with dis-abilities incur significant extra cost to meet the conditions for social participation. Yet, disability welfare payments are insufficient to meet this cost, and institutional discrimination against disabled people is prevalent throughout the labour market (Hull 1998: 201–2). Hull observes: ‘Contrary to the conventional view... functional limitation does not always secure or guarantee disadvantage society can be equally to blame, or more to blame, in many cases’ (1998: 203).

In this social view of disability, socially constructed barriers are the primary dis-advantage faced by people who do not function in species-typical ways. These obstructions range from discriminatory practices such as disability-based denial of employment through thoughtlessly inaccessible design such as the installation of steps rather than ramps. Sometimes the absence of adequate support services and health-care benefits is also construed as a barrier to the effective functioning of people with certain kinds of impairments (Silvers et al. 1998).

From this perspective, the pre-eminent strategy of the medical model—namely, altering biologically anomalous people to make them species typical or normal—unfairly disparages personal traits central to the identity of individuals with dis-abilities. Further, by placing a premium on medically altering them so as to bring their modes of functioning into better conformity with species-typical functioning, this medicalized approach to disability can be coercive and can expose the disabled to risky or ineffective medical interventions. Consequently, from this viewpoint, reforming social arrangements to achieve equitable opportunity and accessibility is the best route to reducing dysfunction in biologically anomalous people.

The social model thus entails that the solution to the ‘disability problem’ lies in fully realizing disabled people's right to be in the world. There are two competing schools of philosophical thought about this right. The first rests firmly on the social model by arguing that ‘injustices may be better remedied by changing social norms and the structure of public goods than by redistributing resources’ (Anderson 1999: 336). In this first view, enabling disabled people to be in the world is grounded in the collective good of achieving a democratically equitable social order based on principles that express respect for everyone. This approach emphasizes participatory rights that give disabled people claims to inclusion in social practice and to revision of such practice if needed for access.

The second straddles the medical and social models by revising the distribution of private goods to improve disabled individuals' personal capacity to cope with existing social norms. In this second view, the right of disabled people to be in the world is grounded in the individual good of achieving personal satisfaction based on principles that promote well-being for everyone. This later approach claims the disabled are due compensatory rights to repair their deficits, relieve their needs, or mitigate the consequences of their losses.

### 2.2 Disability Rights

#### Disability Rights as Participatory Rights

Philosophers like Elizabeth Anderson (1999), Anita Silvers (1995, 1997; Silvers et al. 1998), and Iris Marion Young (1990) all take justice to be about interpersonal respect and inclusive social participation. They argue that to treat disabled people equally requires reshaping the practices that exclude them. From a disability perspective, physical or cognitive limitations are not absences of talent, but instead are constraints upon the functional modes through which talents are exercised. Social arrangements that offer equivalent prospects of success to people of similar talent and ambition provide fair equality of opportunity. Fair equality of opportunity requires that people with similar talents should enjoy equitable access to the necessary social conditions for realizing their talents, regardless of whether their functional modes are normal or anomalous.

In this kind of view, equality is a social relationship that is free of exclusion, coercion, and oppression. Anderson and Silvers follow Iris Marion Young in identifying inegalitarianism with claims about the necessary dominance by some social groups of others, usually on the ground that the former have superior intrinsic worth while the latter are incompetent or otherwise intrinsically inferior (Silvers 1995: passim; Anderson 1999: 311–12). To secure equality, the social patterns in which people interact, and through which personal goods are actualized and interchanged, must express respect for everyone alike, whether fortunate or unfortunate, judicious or reckless, through mutual, reciprocal consultation and action (Anderson 1999: 313).

Of course, functioning as a social being requires functioning as a human being, which involves effective access to the means of sustaining one's biological existence and agency. It also requires effective access to the means of being productive, of developing talents, and of forming relationships in civil society (Anderson 1999: 318). Therefore, regardless of whether one is typically or anomalously circumstanced, everyone equally has a right to social arrangements that provide the enabling conditions for these fundamental capabilities (Anderson 1999: 331). In this way, democratic equality matches remedy to injustice. If, as tenBroek describes, the fundamental injustice
done to the disabled is to exclude them from the world, the remedy lies in assigning them the direct right to the means of inclusion, not the
circutous right to be compensated for exclusion by gaining satisfaction in some alter-native way (Anderson 1999: 334).

In this spirit, Anita Silvers proposes a test for the justice of specific social prac-tices to see whether their exclusionary aspects grow out of
the dominance of non-disabled people's convenience and tastes. 'Historically counterfactualizing' is a conceptual test that involves
asking whether a practice would be the same if the disabled individuals it marginalizes were the majority, not a powerless minority, of
people. Its purpose is to free us from the constricting routine of institutionalized behaviours so that we are not misled into
assuming that the familiarity of a practice signals its biological or economic necessity (Silvers 1995, 1998, 2000; Silvers et al. 1998).

Historical counterfactualizing indicates whether, by broadening assumptions about the variety of modes in which individuals can achieve
effective function, we can and should redesign a practice so that anomalous individuals can partake of the collective good it secures. For
example, the practice of privileging visual over aural

and tactile media for storing data disregards the functional modes in which blind and dyslexic individuals retrieve information. That this
practice is exclusionary is of no moment to the majority of people. They are sighted, so for them the practice works well. If, however, blind
individuals, for whom looking at texts is dysfunctional, were the majority rather than the minority, the practice would be different. The
relative ease of storing and conveying information in a variety of media would make offering information in alternative formats the rule
rather than the exception (Silvers 2000).

Historical counterfactualizing helps us to identify disadvantage that is the arbitrary artefact of social arrangements controlled by the
standard of normality. It facilitates distinguishing arrangements that do no more than conform to the dominant group's tastes and
preferences from arrangements that have more to recom-mend them. Tastes and preferences are transitory. The practices they elicit
need not be perpetual. Exclusionary practices dominate, Silvers believes, because most often they are comfortable for the majority and
disadvantage only a minority of people. Although the majority may be discomforted if restrictive practices are altered to become more
inclusive, their social participation is not threatened by such change. Thus, on balance, such social reform is less burdensome for
members of the majority than enduring exclusion is for members of the minority.

Some alterations of practice to repair disadvantages suffered by the disabled can be justified as necessary to counter our culture's
arbitrary and oppressive affinity for normality. But historical counterfactualization also helps identify elements of our current disability
policy that do not have such a warrant. To illustrate, the disabled have been disadvantaged in gaining access to the workplace. So it is
sometimes thought that equity requires providing compensatory income for them. Yet there is no reason to think that, were the disabled
the majority instead of the minority, they could command compensatory income. Were most people disabled, it would surely be very
difficult for the able-bodied minority to care for and sustain so many people with disabilities. So, were the non-disabled in the minority, it is
less rather than more likely that they could guarantee to provide subsistence for the disabled.

Counterfactualizing thus reveals nothing arbitrary nor inequitable if society does not supply such care. Indeed, counterfactualizing
indicates a significant problem with the strategy of utilizing compensatory income to offset the social disadvantage disability occasions.
The feasibility of doing so wanes with increases in the population of people who are excluded from the workplace because of their
disabilities. This result suggests that reducing exclusion is preferable to compensating for it (Silvers 1995; Silvers et al. 1998).

Negative and Positive Disability Rights

This debate may seem to reflect the larger philosophical discussion of positive and negative rights. For philosophers who propose
reshaping social practice to permit

disabled people fully to participate in society, ensuring them the same liberatory rights that others enjoy is preferable to granting them
special compensatory rights. Although such emancipation from social restriction is usually associated with the exercise of negative rights,
it may be misleading to impose the traditional template of positive and negative rights on our consideration of disability rights.

Negative rights limit the ways in which the activities of rights-bearers may be obstructed; the state has a duty to ensure that the exercise
of these rights is not restricted and consequently must ensure that rights-bearers are free of the prohibited constraints. Positive rights are
entitlements to benefits the state has a duty to provide to rights-bearers (Gewirth 1992: 106–7). Ensuring the successful exercise of either
kind of right has its costs: typically, allocation mechanisms, such as the social security system, must be available to support positive
rights-bearers, while enforcement mechanisms, such as the judicial system, must be available to protect negative rights-bearers.

Discrimination curtails liberty by corrupting the routes of access to productivity and fulfillment. Claimants to protection against
discrimination traditionally call on the resources of the state to extirpate harms that arise when the bigotry or arbitrariness of public and proprietary entities blocks this access for certain kinds of people. Their claims are to relatively ‘thick’ rights that command positive action to open the routes to accomplishment (Silvers 2000).

There is neither agreement nor clarity regarding the point at which a thick negative right transforms into a thin positive right. Responses to discrimination some-times appear to proffer special preferences similar to the entitlements associated with positive rights. For instance, US disability discrimination law requires employers and programme operators to make reasonable accommodations to give disabled people meaningful access to productive, fulfilling social participation. Regulations that direct the installation of toilet stalls wide enough for wheelchairs in office buildings, or the toleration of guide dogs in restaurants and aeroplanes, may appear to entitle disabled individuals to extra cost and exertion on other people’s part, rather than merely to protect their liberties. Thus, claims to such accommodations may appear to exercise positive rather than negative rights (Illingworth and Parmet 2000). From a disability perspective, however, these regulations protect disabled people’s liberty to access toilets, restaurants, and planes. To make being stripped of one’s mobility device (because toilet stall doorways are too narrow for wheelchairs, for example) or one’s visual alerting system (because guide dogs are banned from a restaurant or plane, for example) the condition of entering a facility is as much a curtailment of one’s liberty as making cutting off a person’s legs or poking out his eyes the price of entry would be.

This last observation illuminates one respect in which reshaping social practice resembles implementation of a negative, rather than a positive, right. While positive rights are entitlements assigned to some among us, negative rights are shields for all citizens alike. The characteristic defence of a claim to a positive right involves

differentiating those said to be deserving of it from other individuals. In contrast, the characteristic defence of a claim to a negative right involves assimilating those who lack a liberty to other individuals who already enjoy it. When disabled people pursue recognition of their right to be in the world, they seek the same freedoms of access as are afforded without question to other citizens. To alter practice so that civic and commercial facilities can be utilized by those who substitute mechanical devices or animal aides for legs and arms, or eyes or ears, is simply to give disabled people the same freedoms of social participation as other people enjoy.

Thus, when disability rights are claims for participation, they appear to fall within the negative rights tradition. For non-disabled people who need undergo no struggle in order to be in the world, being required to accommodate people with disabilities may be misperceived as privileging this minority and so may be received with resentment. To make clear that such accommodation offers disabled people only freedoms others enjoy, it is advisable (as Iris Marion Young points out) to adopt public and commercial policies aimed at fostering inclusion by accommodating the differences of all citizens, not just those certified as falling into the dis- ability category. For instance, non-disabled and disabled workers alike should challenge employers to create more individualized, accommodating, and humane workplaces (Young 2000).

Disability Rights as Compensatory Rights

Nevertheless, philosophers who take justice to be mainly concerned with the fair allocation of resources often think that access to social opportunity is a peripheral issue when it comes to the disabled. They assert that disabled people characteristically need more than the usual resources. This to them is the main source of the problem of disability. Adherents of the view that equalizing must offer more than opportunity urge that something more than levelling the playing field must be done. Individuals must also be made capable of leaving the starting gate, even if doing so involves an unevenness in how goods and services are allocated. In general, for disabled people to flourish, extra resources are needed to remedy the results of their limitations.

Disability thus poses a philosophical challenge—namely, the question of whether the disabled can receive greater portions of goods than other people do without being unfairly privileged by the allocation scheme. Amartya Sen (1982, 1992, 1993), Bickenbach (1993, 2000), Ronald Dworkin (1994), Dan Brock (1995, 2000), Allen Buchanan (1995, 1996), David Wasserman (Silvers et al. 1998), and Richard Ameson (2000) are among the well-known contributors to the literature on this subject. Because natural differences, including impairments, affect well-being, Sen urges taking them into account in formulating just distributive arrangements. Sen believes justice requires allocating more resources to individuals who require them to enjoy basic capabilities. It is, for instance, merely just, rather than privileging, to provide more resources to people who need to purchase wheelchairs in order to mobilize than to people who can mobilize by walking. Brock thinks that some of the differences caused by impairments irremediably decrease well-being and therefore holds that resource allocation to people with these differences may be neither cost effective nor otherwise beneficial. In a more nuanced discussion, Wasserman points out that any adequate view requires constructing a metric of well-
being that respects the multiplicity of ways in which people can live well. The theory that generates such a metric must convincingly explain how much inequality in the distribution of well-being can be tolerated before differences in allocations become unjust.

Ameson argues that ‘we owe to one another by way of social justice requirements goes beyond... nondiscrimination’. He believes that ‘the provisions of the Americans with Disabilities Act... cannot be fully justified by appeal even to the most plausible versions of the nondiscrimination ideal’ (Ameson 2000: 18). For Ameson, the pre-eminent ethical question in regard to disability is what we owe to people whose conscience is so low as to compromise their well-being regardless of the excellence of their access to opportunity. Moral value is maximized by making gains in the expected well-being of individuals disadvantaged through no fault of their own. By increasing such individuals’ material resources, we can sometimes reconfigure the circumstances that determine their lifetime allotment of well-being. We are obligated to strive for satisfying outcomes for all deserving people alike, regardless of their differences of merit or talent. Such social intervention promotes a fairer distribution of well-being than could be accomplished by relying on individuals’ good or ill luck in making good use of their access to opportunity.

Undoubtedly, compensatory resources for goods and services conducive to well-being would benefit many people with disabilities. Nevertheless, Anderson criticizes Ameson for grounding justice for disabled people in considerations of the putative incompetence and consequent needlessness of this class. Ameson creates another difficulty by particularizing allocation decisions. On the criteria he gives, deserving beneficiaries must be blameless for their deficits and must possess the capacity to capitalize on allocated resources by achieving enhanced welfare. According to Ameson, what we owe each other depends on two factors: (1) how badly off or well off each person would be in the absence of further receipt of benefits, and (2) the extent to which each person’s well-being prospects would improve if further benefits were bestowed on that person. Individualized judgements are required to deter-mine whether a particular disabled person meets these criteria and thus is qualified to exercise disability rights. Individual beneficiaries of welfare justice must show they are both most deserving and most deprived. Further, the extent of their deprivation conditions their deservingness.

However, this approach invites a counter-intuitive conclusion—namely, that of two individuals who are blind: the more talented one is more fortunate and therefore appears to deserve less justice than the less talented one. For instance, tenBroek's successful position in life would not entitle him to as much justice as a blind beggar. But having less call on justice can itself trigger neediness. Moreover, what is owed the Berkeley professor and the beggar in virtue of their being blind should be the same, as they have the same disability.

Answering Anderson, Ameson would probably respond that we should be mainly concerned about improving the welfare of incompetent or unlucky disabled individuals rather than with improving the status of the disabled as a class. In sum, Ameson criticizes Anderson and Silvers for an account on which justice invites us to treat very differently disabled people homogeneously by giving less weight to promoting deserving individuals’ well-being than to avoiding actions that might stigmatize the class. On the other hand, Anderson criticizes luck egalitarians like Ameson for an account on which justice treats similarly disabled people differently, depending on the extent to which they are afflicted with personal problems.

Is it appropriate merely to level the social playing field in ways that afford fair access to disabled people as a group? Or is it unrealistic, and thereby unfair, to expect these individuals to take the field at all, let alone succeed on it? Anderson and Ameson answer these questions in different ways because they have very different ideas about what is owed to people in virtue of being disabled.

Anderson seems to construe basic disability rights as group rights. In this approach, disabled people have a collective right to a society in which the existence of their type of person is acknowledged, and where the differences that signify their group membership command respect. For example, in a society where there is respectful acknowledgement that some people do not hear, deaf people can expect information that is conveyed aurally also to be offered in a visual mode. Similarly, where practice is influenced by both the awareness that some people cannot see and the principle that their access to information is as important as anyone else's, blind people have a recognized claim to aural or tactile versions of information that is conventionally presented visually.

In addition to being grouped according to their impairments, all disabled people belong to the more comprehensive collection of individuals whose corporeal or cognitive anomalies result in some degree of non-species-typical performance. Together, they have a broad collective right to a society in which practices are generally inclusive of both species-typical and species-anomalous individuals. Within such a society, they may have derivative individual rights to enforcement or compensation as remedies for exclusion they suffer because they are disabled. Of course, even if a practice is as accessible as good will and good technology can make it, some disabled people will not engage in it successfully. But, in this view, no one is owed success in virtue of being disabled (although there may be other grounds on which disabled and non-disabled individuals alike are owed basic components of well-being).

In contrast, Ameson construes basic disability rights as individual rights. In this approach, disabled people have individual claims to a society in which each enjoys entitlements in virtue of having qualified for membership in the group of the
deserving disabled. Where there is sufficient societal concern for people whose competence is compromised by disability, deaf people and blind people can, for example, expect resources to compensate for the loss of welfare occasioned by limited access to information, at least to the extent that these resources will elevate their well-being. Further, within such a society, disabled beneficiaries may have a derivative collective right to practices that make the allocation of resources effective. For example, to help make allocations of rehabilitative services to disabled individuals effective in securing the benefits of employment, disabled people may be assigned a derivative collective right to accessible public transportation to get to the work-place. However, unlike the former approach, where everyone is owed inclusion for its own sake, in this view no disabled individual is owed inclusion unless it is the most effective route to enhancement of her welfare.

2.3 Disability Rights and Disability Policy

The positions represented by Anderson and Arneson lay out disability rights very differently, not only in respect of whether they are individual or collective, but also in respect of the fundamental values to be sought and achieved by exercising them. Their difference turns in part on a disparity in their conceptions of the connection between social participation and individual flourishing. The issue is whether the successful exercise of participatory rights in itself secures intrinsic value, or whether social participation is a mere instrument, one among other possibly effective approaches, for attaining intrinsically valuable results—namely, the increased well-being that is pursued through the exercise of compensatory rights.

Philosophers who take the pre- eminent kind of disability right to be participatory suppose that individuals cannot flourish without their joining with other humans in some sorts of collective activities. Thus, for them, participation is inherently valuable, and practices should be shaped to facilitate interaction between different kinds of people. A social environment that facilitates their connectedness is important for disabled and non-disabled individuals alike. Individuals’ basic needs are to be assessed in terms of cultivating the capabilities they must have to maintain their social connections. Distributing resources to satisfy these individual needs secures instrumental value only. Allocation schemes that segregate or otherwise isolate their disabled recipients are counterproductive in this view.

On the other hand, those who construe the pre-eminent kind of disability right to be compensatory suppose that participation in community activities contributes to, but is not necessary for, every human’s well-being. To base disability rights on the value of social inclusion, they say, is to deny rights to very severely disabled people for whom access to participatory activities is either beside the point or not possible to achieve. Yet these are the individuals who, in virtue of the profundity of their disabilities, should be most able to have their claims on others acknowledged.

Disability rights should be meaningful for the most disabled and responsive to their individualized situations. Therefore, allocating resources to satisfy these individual needs secures intrinsic value.

Jonathan Wolff (2000) crafts a position that integrates the fair-access and fair-allocation approaches. Drawing on the work of Ronald Dworkin to propose how a society of equals should treat the disabled, Wolff identifies three acceptable responses: medical interventions remedying impairments that occasion disability, resource allocations compensating for disadvantages associated with disability, and social-practice alterations nullifying disadvantages imposed on disability. The objective is to help each disabled individual find a place in the world.

Regardless of which strategies we emphasize, Wolff reminds us, we must decide what amount of effort and resources to expend on doing so. Following Dworkin, he recommends imagining people behind a veil of ignorance, aware of the disadvantages of disability, its general prevalence, and the costs of remedial strategies, but unaware of their own disability status. We should consider how well, in what ways, and at what cost people who do not know whether they are or will be disabled would insure themselves against suffering exclusion should they become so. Tax revenues generated on this basis would be assigned to a government agency charged with pursuing the most effective combination of strategies—medical repairs, compensatory allocations and services, or reform of exclusionary social practices—both for individuals and for the general public.

Wolff’s solution reflects the state of disability policy in many nations. Medical research and resources, funded by various public or private schemes, are applied to reduce the numbers of the disabled. Criteria of deservingness are applied to those who cannot be cured to determine the kind and amount of material resources and social services each should receive. Attention has turned to requiring that environments be more accommodating to people with various kinds of biological anomalies. In some nations these strategies are all pursued by a single agency charged with addressing the disability problem. In others, different branches of government execute different aspects of disability policy.
Regardless of how disability policy is administered, these components do not always coexist compatibly. There are deep conceptual tensions between viewing the disability problem as primarily caused by discrimination and therefore as susceptible to a civil rights solution, and viewing it as primarily a social safety net issue and therefore as susceptible to a needs-based benefits solution. How we credit what disabled people claim society owes them is influenced by whether the claim is framed as liberatory—that is, as a claim to opportunity all citizens should be positioned to enjoy—or as allocatory—that is, as a claim to assistance some citizens should be positioned to receive.

In the USA, disability entitlement programmes that are partially or fully needs-based pre-dated the application of the civil-rights paradigm to disability discrimination. During the quarter century that followed the Civil Rights Act of which

Jacobus tenBroek had such high hopes, few provisions to relieve people with dis- abilities of their exclusion from social participation were integrated into comprehensive legislation aimed at safeguarding minorities generally. (The Fair Housing Amendments Act of 1988 is a notable exception.) Instead, their protection against discrimination was fashioned mainly by enacting or amending statutes pertaining solely or principally to the disabled. Important laws of this kind included the Rehabilitation Act, the Education for All Handicapped Children Act (since 1990 the Individuals with Disabilities Education Act), and the Developmental Disabilities Assistance and Bill of Rights Act. Having waited in vain for nearly a decade to draw the disabled under the shield of the 1964 Civil Rights Act, disability leaders eventually introduced a non-discrimination provision into federal statute by amending the Rehabilitation Act. Sections 503 and 504 of the Rehabilitation Act prohibit denying individuals participation in federally funded programmes or activities in virtue of their handicaps, but enforcement mechanisms were lodged mainly in funding agencies’ complaint reviews. Eventually, the idea of achieving civil-rights protection through a new federal statute specifically aimed at forbidding discrimination based on disability was adopted, and the Americans with Disabilities Act (ADA) became law in 1990.

During the two decades between the amended Rehabilitation Act and the implementation of the ADA, the statutory conceptualization of disability discrimination seemed unproblematic. In the many investigations and rare litigations pursued under the Rehabilitation Act, actions centred mainly on whether complainants had been subjected to unwarranted exclusion. Disputes most often were over whether there were unburdensome ways in which disabled complainants could be given access to the benefits federally funded programmes bestowed on non-disabled people.

Complainants were typically people who suffered from diminished prospects for employment because of some limitation of body or mind. Thus such persons already met the criteria for services under the Rehabilitation Act. The relief they sought typically was pertinent to the core purpose of that legislation, for it was commonly an action or accommodation to gain or maintain (suitability for) employment. In the context of the Rehabilitation Act, reasonably accommodating to a person's disability is generally thought of as responding to the person's special needs.

Consistent with the nature of the Rehabilitation Act as an entitlement to bene- fits statute, concerns that increasing the welfare of disabled complainants decreases other people's welfare are the most frequent source of contentiousness provoked by attempts to exercise the disability rights established by Sections 503 and 504. For instance, in Southeastern Community College v. Davis (1979), the Supreme Court refused to order that assessment of the plaintiff's application to a nursing programme be based solely on academic record, as other applicants' were. On the grounds that her deafness prevented her from fully practising the profession 'safely' (for instance, she could not be a surgical nurse because her colleagues' surgical masks would prevent her from reading their lips), the court decided that the

public benefits of denying her this opportunity outweighed the personal benefits to Davis of being admitted.

Litigation under the ADA commonly turns on questions of classification rather than access. Most of the ADA cases heard by the Supreme Court involve this issue. (Some have concerned whether specific physical conditions meet the ADA's classificatory criterion for being protected from disability discrimination, another addressed inconsistencies in how different statutes define disability, and yet another turned on whether disability is a classification that qualifies for Fourteenth Amendment protection (Francis and Silvers 2000)). For example, in Kirkingburg, the court did not address the justice of denying the plaintiff employment as a driver, simply because of his monocular vision and despite his demonstrating adequate depth perception and flawless driving record. Instead, the fact that the plaintiff had overcome the usual limitation of monocular vision and had passed the tests for depth perception meant, to the court, that he could not be classified as disabled and so had no standing under the ADA (Albertsons, Inc. v. Kirkingburg 1999). Notice that, by pursuing individualized enquiries into whether plaintiffs' impairments are sufficiently limiting so that eligibility criteria are met, the court has applied procedures characteristically applied in disputes about social welfare rights to adjudicate civil rights complaints.

In sum, US disability policy encompasses incongruous understandings of disabled people's rights. Even where civil-rights and benefit-
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2.4 Are Disability Rights Redundant?

Moral theories that centre on justice typically foreground the goals of securing equality for all alike through the exercise of rights that all should recognize. There are, however, challenging reasons for thinking that assigning justice the pre-eminent moral role in ameliorating the disability problem disregards the realities of disability and especially of the dependency associated with it. Looked at in this light, grounding disability policy in other, more appropriate values should make appeals to disability rights subsidiary or even redundant.

Writing about her relation with her disabled daughter, Eva Feder Kittay considers how we can best care for people made vulnerable by significant disabilities. We should recognize that their lives have a value unrelated to productivity and profit: their contribution is the bonding that relationships of dependency create. This is an important contribution because the coherence of our sense of ourselves as persons relies on our relations with others. Supporting the bonding between seriously disabled individuals and their families helps realize the human capacity for moral connectedness (Kittay 1998, 2000).

Relating to disabled people holds further beneficial lessons. The more we stress the importance of independence, Kittay observes, the more we are inclined to feel threatened by disabled people who remind us of our own potential for dependency. We should utilize this reminder to recognize that each of us has periods in which we need to be cared for and thus are susceptible to exploitation and abuse. Then we will not be motivated by the fantasy that our lives are at all moments under our own control.

Susan Wendell also thinks feminist ethics that value care over justice, and inter-dependence over autonomy, afford disabled people a role preferable to the one they must assume under the traditional ethical standards of justice, equality, and autonomy. Within the embrace of an ethics of care, Wendell urges, disabled people would be free to acknowledge their limitations, dependencies, and other real differences. Unfortunately, cultural taboos rooted in the currently predominant value of self-determination through self-sufficiency now discourage disabled people from being honest in communicating their experiences (Wendell 1996). Far less optimistic about reforming cultural values than Kittay is, Wendell doubts that we will cease to occlude disability. She thinks fears of losing bodily control and suffering are too deeply embedded in our culture to be dislodged.

On the other hand, Alasdair Maclntyre (1999) casts the disabled as the quintessential moral insiders because rational consideration of their experience stimulates both personal and social virtue. Acknowledgement of disability plays an important role in answering the question ‘Why be moral?’. Maclntyre argues. The pervasiveness of human disability is a compelling reason for virtuous social conduct. Disability makes dependence an ineluctable element of human existence, and the disabled should not be relegated to the social fringe because their state is a condition we all have the potential to share.

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For Maclntyre, the occlusion of disability of which Wendell complains is indicative of an irrationally driven, scarcely virtuous culture. Personal and social virtues of acknowledged dependence facilitate our flourishing as dependent animals, he thinks. Further, laws that protect the disabled will prove hollow in societies where the virtues of acknowledged dependence are not cultivated (Maclntyre 2000). In societies where this is not so, even generally benevolent people

will tend to see the cause of the disabled as something competing with other causes... They will not take the possibility of... a career as a provider of care for the disabled as having any great claim upon them and they will not understand the importance of... enhancing the status ... enjoyed by those who give their lives to such caregiving. Moreover, they will not recognize what important
This suggests that there may be an inverse ratio between a society's virtue and the need for its disabled citizens to invoke disability rights.

Virtue theory competes with welfare theory, but complements inclusion. Inclusion theory urges reshaping communal practice to achieve more expansive goods. It can promote practices of caring for individuals at times and in aspects where their social participation is naturally unachievable rather than socially barred. In contrast, both inclusion theory and virtue theory lie uneasily with welfare theory. For inclusion theory, welfare theory's emphasis on establishing eligibility for justice is exclusionary. For virtue theory, welfare theory makes the care that should be freely and compassionately given by individuals into a public obligation discharged by an impersonal system.

3. Conclusion

Prior to calling attention to the urgency of recognizing disabled people's right to be in the world, Jacobus tenBroek studied and wrote about the reasons Americans of African descent should not be collectively enslaved, Americans of Japanese descent should not be collectively imprisoned, and women should not be collectively prohibited by statute from rewarding kinds of employment (Tussman and tenBroek 1949). It is no accident, then, to find him gripped by the similarities between such constraints upon the liberties of other minorities and disabled people's deprivation of social access. Nor is his supposition that all such wrongs are susceptible to similar remedies surprising. Whether his assumption in this regard is accurate remains an unresolved issue for both public policy and practical ethics.

TenBroek's proposal emerged in a climate in which a tradition of casting welfare, rather than liberatory, values as the basis of disability rights prevailed. An even older tradition, in which virtue rather than duty properly motivates interactions with disabled people, also retained influence. In such tangled circumstances, which per sist, shapers of disability policy are inclined to elide competing theories of moral value and to confute very different domains of ethical appeal.

One challenge for practical ethics, then, is to clarify the implications not only of various construals of disability rights, but also of theories on which the pursuit of certain goods, or the cultivation of certain virtues, eclipses proposals to address the social exclusion of disabled people through recognition of their rights. Equally important is the challenge of elevating both private and public efforts to address the disability problem by introducing into these exceedingly emotional and politi cized debates the higher standards of lucidity, coherence, and sensitivity to nuances, associated with serious endeavours of practical ethics.

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