PHILOSOPHICAL REFLECTIONS ON DISABILITY

Edited by

D. CHRISTOPHER RALSTON
Rice University. Houston, TX, USA

and

JUSTIN HO
Berkeley School of Law, University of California
at Berkeley. Berkeley, CA. USA

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Chapter 10
Disability Rights: Do We Really Mean It?

Ron Amundson

This chapter will argue that the disability rights (DR) movement has a much lower level of acceptance than other civil rights movements, especially within the academy. This is true even though the other movements are regarded (at least by disability rights advocates) as similar in nature. By "within the academy" I mean within the discourses, formal and informal, of professional academicians: professors and other intellectuals and their students. I will try to demonstrate by example that positions held by the DR movement are summarily rejected by many within the academy, even though similar positions are unquestioningly endorsed when stated by advocates of women's rights and "racial" or ethnic civil rights. My claim is not that women's rights and racial civil rights are genuinely supported within the academy. Racism and sexism still exist, and have serious negative effects. However, racism and sexism are almost never openly endorsed in today's academic discourse. The mismatch between discourse and practice is regrettable. However (I suggest) if practice matched discourse, minorities and women would have very nearly equal rights with majorities and men within the academy. Disabled people would still not have equal rights with nondisabled people. Basic DR principles are rejected not only in practice but also in discourse.

Within the academy, language that openly disparages groups that claim civil rights protection is almost never acceptable, and statements that challenge the civil rights goals of these groups are regarded as highly suspect. I do not mean to celebrate the demise of sexism, racism, and heterosexism; the attitudes still lurk. However, the expression of such attitudes is now regarded as inappropriate at the very least. In contrast, I will argue, discourse that defends the justice of socially inflicted disadvantage to people with impairments is not only accepted within the academy—it is virtually the norm. I will include examples of anti-DR discourse from the media, and from producers of the media. Some of this material does not come precisely from the academy, but serves to illustrate the attitudes that are damaging to DR.

R. Amundson
Department of Philosophy, University of Hawaii, Hilo, Hawaii, USA
e-mail: ronald@hawaii.edu

In order to pursue this discussion, some semantic stipulations are necessary. First, we must distinguish biomedical conditions from the disadvantages that might be associated with them. The purpose of this distinction is keep our attention on the contingent nature of the disadvantages that often accompany biomedical conditions. Unemployment, for example, is frequently associated with quadriplegia. But the DR movement rejects the "naturalness" of that association. It is no more natural to assume that a person with quadriplegia is unemployed than to assume that a woman or a member of an ethnic minority is unemployed.

The term *impairment* will refer to a biomedical condition that is presumed to be subtypical of the human race, without any assumptions about the disadvantages that might accrue to individuals who possess impairments. This is consistent with most DR literature. Disadvantage will be separated into two distinct kinds; those that are socially mediated (on the one hand), and those that are intrinsic to an impairment itself (on the other).

- **Conditional** disadvantages of impairment (CDIs) are disadvantages that are experienced by people with impairments, which are produced by the social context in which those people live.
- **Unconditional** disadvantages of impairment (UDIs) are disadvantages that are experienced by people with impairments, which are produced irrespective of their social context.2

The distinction between CDIs and UDIs is not completely a matter of objective measurement, of course. It can be politically contentious. For example, DR advocates might regard some disadvantages as socially caused that critics of the movement would regard as unconditional. But this happens in all civil rights movements. Opponents of the women's movement often claim that women's preponderant role as caregivers is a natural consequence of their (innate) psychology and biology; feminists consider it social discrimination. For our purposes, the argument need not be carried this far. The mere recognition of the CDI/UDI distinction will be enough to draw attention to the points we need to recognize. We are, after all, talking about the academy, an institution primarily made up of people who believe that they support DR, just as they (believe that they) support the women's movement. Few of these people would claim that women's roles as caregivers is amply justified by biological facts. Husbands among this group may not share childcare responsibilities. But if they don't, at least they have the grace to be embarrassed about it.

Socially disadvantaged groups are typically stigmatized (in the sense of stigma specified by Goffman, 1963). This chapter will illustrate the nature of the stigma as it continues to apply to people with impairments. That stigma is responsible for the continued failure of so many mainstream academics to come to terms with the DR movement, and to grant it the legitimacy that is granted to other civil rights movements. Stigmas are associated with *stigma theories*. These are ideologies: conceptual structures that rationalize particular beliefs about stigmatized groups, and make the disadvantages of these groups seem natural and inevitable. One aspect of the stigma of disability is the belief that UDIs (the disadvantages that are intrinsic
to impairments) are immense, and that people with serious impairments are permanently disqualified from ordinary life by the immensity of their burden of UDIs. Such beliefs were commonly applied to women and minorities in past years. They continue to be applied to people with impairments today. Perhaps you doubt; let us see. The discussion will be partly historical, beginning with an illustration from the early days of the civil rights movement against racism.

10.1 Early Context

Case 1. The crippled veteran of the Pacific war tells my [African American] brother: 'resign yourself to your color as I got used to my stump; we are both casualties.' However, with all my being, I refuse this amputation. I feel like a soul as wide as the world, a truly deep soul, as deep as the deepest river; my chest has the power to expand infinitely. I am a don and I am advised to accept the humility of the crippled. (Frantz Fanon, 2001 [1951], p. 200, referring to a scene from Home of the Brave, a 1949 American movie directed by Mark Robson about racial tensions within an integrated group of American soldiers on a dangerous mission)

I ask the reader: Is this not a heart-wrenching plea for racial equality? But wait—save your answer until we discuss the circumstances in which Fanon refused his "amputation."

Frantz Fanon was among the most powerful anti-racist and anti-colonialist voices of the mid-20th century. Only the faintest glimmerings of a DR movement existed in 1951. The successes of the racial civil rights movement and the women's movement were needed before enough disabled people had the liberatory consciousness to forge a DR movement. Today's movement owes everything to voices like Fanon's, which revealed the assumptions behind the complacent racism of his day.

Half a century later Fanon's anguished plea should sound old fashioned, and even reactionary. Unfortunately (I suggest) it does not. I repeat the question: was that statement not a heart-wrenching plea for racial equality? To a DR activist the answer must be: No. It was an attempt to bargain for racial dignity at the expense of the dignity of people with physical impairments. I suspect that only a few readers would have recognized that fact immediately upon reading the passage. I confess that I (a DR activist) read it with a vague puzzlement two or three times before the implications of Fanon's statement came crashing home to me. Fanon insists that he is not like a cripple. He says that enforced humility is not deserved by people of African descent in the way that it is deserved by cripples.

The very power of Fanon's statement relies on the contrast between race and impairment. "Here's how badly white people think of us: they think of us as if we were cripples!" Such a comparison should not be assumed to be an insult by anyone who supports DR in the modern day, however much we may be able to forgive Fanon for his ableist ignorance. To compare a non-disabled person to "a cripple" should be no more insulting than to compare a white person to a nonwhite person, or a man to a woman. My purpose is not to criticize Fanon, a person of his times. Nor do I mean to defend the movie-message that Fanon rejected. Racism and ableism are not the same, and it is quite understandable that Fanon should consider that message to
be a trivialization of racism. But he could have defended the unique evil of racism without implying that amputees genuinely deserve the humiliation that he rejects for himself.

My purpose in this first example is to sensitize the reader (who may be unaware of the DR movement) to the difference between traditional views of disability and the views of modern DR advocates. Disability is regarded as neither shameful nor pitiable, but a fact of life that can be dealt with like any other fact of life. The comedian Jerry Lewis was a top movie star at the time Fanon's quotation was written. Lewis is now the spokesperson for the Muscular Dystrophy Telethon. He is also a regular target of DR protests and criticism because of his demeaning descriptions of the people who have the conditions his charity is intended to support. "Piss on Pity" is a frequent DR slogan of this protest. Lewis is angered by this criticism, because he considers himself a genuine humanitarian. He was asked about the protest on the CBS Morning Show in 2001, and his response was "If you're paraplegic and in a wheelchair and you don't want pity, stay in your house!" (CBS Morning Show, 2001).

Much of the world has moved past Lewis's old bigotries. Now that the environment is more accessible to wheelchairs, wheelchair use doesn't seem to arouse the pity that Lewis expects. Let us consider whether other aspects of the movement are equally understood and accepted.

### 10.2 Media

The media are widely recognized as expressing and promulgating stigmas of impairment, just as they have done in the past with the stigmas of race and sex. The surprising fact is the openness and self-consciousness with which this happens. Publications about the techniques of screenwriting, for example, do not openly advocate the use of sexist or racist stereotypes in order to propel story lines. But they do openly advocate the exploitation of the stigmas of impairment, in full recognition that they will be harmful to people who have the impairments being stigmatized. The following passage is written by Syd Field, widely regarded as one of the best teachers of screenwriting.

**Case 2.** Pictures, or images, reveal aspects of character. In Robert Rosse's classic film *The Hustler*, a physical defect symbolizes an aspect of character. The girl played by Piper Laurie is a cripple; she walks with a limp. She is also an emotional cripple; she drinks too much, has no sense of aim or purpose in life. The physical limp underscores her emotional qualities—visually. Sam Peckinpah does this in *The Wild Bunch*. The character played by William Holden walks with a limp, the result of an abortive holdup some years before. Physical handicap—as an aspect of characterization—is a theatrical convention that extends far back into the past. One thinks of Richard III, or the use of consumption or VD that strike the characters in the dramas of O'Neill and Ibsen, respectively. (Field, 1994, pp. 31-32)

Note how Field describes his technique. Representations of a character's physical impairment are said to "reveal" a character flaw. Physical impairments represent character flaws as "pictures, or images... visually." This is utter nonsense. In the
real world, one cannot learn about peoples' character flaws by observing their impairments. Physical impairments are in no way "pictures or images" of character flaws. Such notions are expressions of a stigma theory, an ideology. The stigma theory for physical impairment provides us with a code by which we can read character flaws out of impairments. But this "reading" comes entirely from the ideology, the bigotry, not from any associations that we have learned from the real world.

According to this ideology, everyone with a physical impairment either (a) is bitter and angry at the world because of their impairment, (b) got the impairment because of a character flaw and so somehow deserves it, or (c) in some other mystical, fairy tale-like manner possesses a character flaw that is symbolically reflected in their impairment. There is no truth in this fairy tale; it is pure stigma. Syd Field (the screenwriter) has not empirically discovered an association between physical impairments and character flaws. The ideological association in the media between impairment and character flaw is widely discussed in DR and related literature (Sontag, 1989; Wendell, 1996; Longmore, 1985; Norden, 1994; Darke, 1998). If Field were honest (and fully conscious of what he was doing) he would have said: "Physical impairment is popularly associated with character flaws. Like other social prejudices, this stigma can be usefully exploited in constructing screen plays." The ideological connection of character flaw with visible impairments does immeasurable harm to people with impairments. But this is of no interest to Field. He's a screenwriter, not a moralist.

Exploitation of racist and sexist stigmas are just as useful as ableist stigmas, and were openly used for many years. Civil rights movements have reduced this exploitation for most groups, but not yet for people with impairments. Field's book does not recommend using racist or sexist stereotypes as "an aspect of characterization" in the way that he uses ableist stereotypes. But if he had written in 1950 he may well have done so. (See the characterization of Zip Coon below.) We should learn from the fact that Field was still openly exploiting this stigma (but not those of sex and race) in 1994.

A direct and conscious exploitation of an ableist stigma can be seen in an interview of John Cleese, a comedian made famous by Monty Python's Flying Circus (a comedy series well-loved among philosophers). In an interview that aired in 2006. Cleese was asked to explain his talent at mocking authority figures. One answer was that he had developed a special understanding of how authority could be made to look ridiculous. He revealed his secret: authority figures should be depicted as disabled.

Case 3. I realized very, very early on that if somebody, a character that you're going to write is, is, is, is going to do that, then it's funny if he's the head of the Secret Service and not funny if he's a milkman. So that the more authority that you give these characters, the more that they have hanging on them, the more people's lives depend on how they're going to act. then the f - f - f - funnier it is when they do a bit of that. (Cleese, 2006 [1986], emphasis added)

At this point of the interview, Cleese is sitting at the edge of his chair. During the underlined passages he tightens and twitches his head, neck, and right shoulder, and stammers to imitate the speech of a person with cerebral palsy. He begins to chuckle
when he talks about the authority that his invented character has to affect the lives of others (perhaps being the head of the Secret Service) and at the end of the speech he collapses back into the chair laughing. He and the interviewer share a big laugh at the newly invented character: a director of the Secret Service whose speech and body movements are affected by cerebral palsy.

Notice the stigma that is being exploited in this passage. It is not a character flaw, but generalized incompetence. A person who is unable to fully control his body movements—who moves and speaks like a person with cerebral palsy—is incompetent to make decisions that affect the lives of others. This stigma is assumed to be so deep in the audience's mind that it need not even be spoken. If you twitch, you're incompetent—this is so obviously true that it is wildly funny to imagine you as being employed in a job with a high level of authority. Cleese doesn't try to associate the impairment with a particular demand of the job. The character with cerebral palsy is not assigned a job of, say, assembling watches (a job for which he may be unqualified because of his lack of fine motor skills). The person with cerebral palsy is depicted as ridiculous merely because of his presumed inability to make important decisions. Making important decisions does not require fine motor skills! But stigma overrides logic. This particular stigma is so deep that all that is needed to produce a hysterically funny character is to depict a person with cerebral palsy in a position of great responsibility.

If you're still chuckling at Cleese's character, try this thought experiment. Think of yourself as a well-educated person with cerebral palsy. Think of yourself as going out for a job interview. Now think of your interviewer as having recently seen and enjoyed Cleese's performance of his comedic character—the person in a position of great responsibility who has cerebral palsy. The job interviewer would do well not to laugh in your face. People with cerebral palsy (like people with many other categories of impairment) have a very low employment rate, even when they are well educated and are perfectly competent to do many jobs. Cleese is making a very good living by exploiting and reinforcing the stigma that keeps people with cerebral palsy unemployed. Philosophers love the guy.

A close analog to Cleese's exploitation of the stigma associated with cerebral palsy can be seen in the history of racist humor. During the early nineteenth century, minstrel shows traveled throughout the U.S. The first blackface character (i.e., a black character played by a white actor in makeup) was a slave called Sambo, who was depicted as lazy and ignorant. This served the interests of slave owners: the character showed why slaves did not deserve to be paid wages. Eventually, abolitionists began to make inroads on public opinion. Racist humor changed to meet the challenge. A minstrel show character was invented to mock the free blacks in the North, and ridicule their ambitions. The new character was named Zip Coon, a free black man who was "a dandy and a buffoon." Zip Coon's ridiculous attempts to imitate white people showed how futile the emancipation of blacks would be. A sample of Zip Coon's performance: "Transcendentalism is dat spiritual cognoscence ob psychological irrefragibility, connected wid conscientient ademtion ob incolumbient spirituality and etherialized connection . . ." (Riggs, 1986).
Notice the similarities between the character of Zip Coon and Cleese's off-the-cuff invention of the Secret Service director with cerebral palsy. The black character was a member of a stigmatized group who was depicted as ridiculous when he tried to rise above his socially dictated station. Cleese's character of the Secret Service director with the impairment is exactly the same. In both instances, the audience roars with laughter at the absurd failures of both characters. This laughter performs the social service of strengthening the stigma. By the turn of the 20th century the musical category of what were called "coon songs" was among the most lucrative forms of entertainment, both in stage performance and sheet music publishing (Dormon, 1988). This was during the period of Jim Crow laws and lynchings. No one could question the connection between the "humor" of coon songs and the racist oppression of African Americans of this era. I submit that the same relation exists between Cleese's brand of humor and the social oppression of disabled people today. Just as Zip Coon shows that black people should not expect to be free, Cleese's head of the Secret Service shows that people with cerebral palsy should not expect to hold jobs of responsibility. The very low rate of employment of people with noticeable cerebral palsy, even those with advanced degrees, is a matter of public record (Henderson, 2006; Canadian Association, 2007). Like the composers and performers of coon songs, Cleese plays his part in enforcing this social arrangement.

10.3 Actual Arguments 1: "Disadvantages Remain"

From Chance to Choice (Buchanan, Brock, Daniels, and Wikler, 2000, henceforth FCC) is a very well-received book on the bioethics of genetic technology. It is also one of the first volumes on bioethics to take the DR movement seriously. The book's primary interest in the DR movement comes from the arguments of DR activists who have criticized modern genetic policy, claiming that it verges on eugenics. FCC discusses several of these arguments (with varying degrees of fairness) and rejects them all. My present concern is not with the rejection of the DR critiques, but with the characterization of the DR movement. FCC gives at least three distinct arguments to the conclusion that the DR movement has less moral legitimacy than other civil rights movements. The movements which are said to have more legitimacy than the DR movement include racial civil rights, women's rights, and gay rights. Here is one of those arguments.

Case 4a. The limitations a gay or black person suffers are injustices in a quite uncontroversial sense: they are forms of discrimination. While deaf people and others with disabilities certainly do continue to experience discrimination, they would continue to suffer limited opportunities even if there were no discrimination against them. . . . The fact that it is costly to remove barriers of discrimination against blacks or gays has no moral weight because no one can have a morally legitimate interest in preserving unjust arrangements. . . . the costs of changing society so that having a major impairment such as deafness imposes no limitations on individuals' opportunities are not so easily dismissed. Those costs count from a moral point of view, because there is a morally legitimate interest in avoiding them (i.e. avoiding the costs). (FCC, pp. 283-284. emphases added)
The last line of this argument asserts that there is a morally legitimate interest in avoiding the costs of a society in which all impairments were accommodated to such a point that they produced absolutely no disadvantages to people who possessed them. I will not dispute this claim. However, I will dispute the claim that the DR movement demands such remedies, and that therefore the demand for such remedies reduces the moral legitimacy of the movement. The argument misses the point of the DR demand for justice.

Recall the distinction between CDIs (socially mediated disadvantages) and UDIs (unconditional or innate disadvantages). Every argument that DR advocates have ever made distinguishes between these two categories of disadvantage. For example, the oldest distinction in the movement is embedded in the distinction between "impairments" (defined as brute biomedical facts about individuals) and "disabilities" (then defined as the disadvantages caused by social arrangements to people who have impairments; see UPIAS, 1976). The movement is only concerned to remove "disabilities"—that is, CDIs. Impairments are assumed to cause other disadvantages (that I have labeled UDIs), but the movement simply doesn't discuss those. It doesn't even have a label for them—which is why I had to invent the clumsy term UDI! (Impairment is a label for the biomedical condition, not for the disadvantages that impairments inherently entail—if any.)

FCC's argument is that the DR movement differs from the movement for blacks and gays because "disadvantages remain" after discrimination is removed, and that it would be unjust to impose the costs of removal of these disadvantages (UDIs, the ones that remain, the disadvantages that are inherent to impairments) on society. But wait—the DR movement has never asked that UDIs be removed! The movement is only interested in CDIs— "disabilities" as they were designated in the 1976 UPIAS definition. The disadvantages that come from something other than discrimination are of little interest to the movement, and are surely not a basis for a justice claim of remediation. The general attitude of the movement is that impairment, in and of itself, is something that we can live with. (And why do nondisabled people make such a big deal out of it, after all?) The demands of the movement are not to remedy all disadvantages, but merely to remedy those that are discriminatory, caused by society, and therefore are society's responsibility. When the society builds sidewalks that cannot be used by people in wheelchairs, that's discriminatory. But the fact that Mount Whitney is inaccessible to wheelchair users is not discriminatory, and no one has ever (contrary to the politically-exciting nightmares of conservatives) claimed that the mountain should be ramped.

As already acknowledged, the demarcation between CDIs and UDIs is not cut and dried. But drawing the line between what is and what is not society's responsibility is a problem for all civil rights movements, not only for DR. These debates are ongoing. Affirmative action is one example, of interest to racial and ethnic minorities. The question of social responsibility for day care of children is another, of interest to the women's movement. The DR movement will presumably have to engage in similar contests with the status quo. But the mere fact that some impairments involve UDIs makes absolutely no difference to the legitimacy of DR as a civil rights movement, contrary to the quoted argument from FCC. If the authors
had better understood the nature of the movement, and not been distracted by the scary but irrelevant facts of UDIs, they could not have made such an argument.

10.4 Actual Arguments 2: "Not Unduly Burdensome"

Case 5. Our society has learned through its efforts to accommodate people with disabilities that in many cases lowering the barriers to participation need not be unduly burdensome to others. (FCC, p. 320. emphasis added)

Case 5 gives the appearance of an endorsement of the goals of the DR movement. By now the reader knows what to expect: I will challenge this statement's dedication to the goals of the DR movement. Just so. I will compare the statement to similar statements as they would apply to civil rights for racial minorities and women.

One problem in comparing this statement to similar statements regarding sex or race is that the talk about "lowering barriers" only suits a few cases, such as lowering the employment requirements for carrying weight for women firefighters. Most cases of integration are different: integrating a lunch counter is not a matter of lowering a barrier, but of removing it. The expression "lowering barriers" makes it sound as if the barriers were there for a purpose, so that lowering them is itself some sort of a compromise with high performance. This would be the case if the barriers were in the nature of high standards, like weight-carrying requirements for firefighters, or a grade point average required for entry to a college. But, according to DR activists, the barriers to the participation of people with impairments are not high standards at all. Instead they are arbitrary barriers and obstructions in the environment that serve no legitimate purpose at all. Being able to climb a set of stairs is a requirement for the job of firefighter, but not for the job of receptionist. So removing the barrier of a stairway entrance would be a suitable accommodation for the job of receptionist. (Under the Americans with Disabilities Act, the removal of stairway barriers is subject to certain cost considerations, which will be discussed below.) Sidewalks without curb cuts, and television programs without captioning, are arbitrary barriers that need to be removed, not lowered. They are not high standards that encourage high performance and yield high social benefits. No public interest is ensured by keeping paraplegic people at home and deaf people uninformed. So the phrase "lowering of barriers" already encourages a misleading notion of barriers in the context of DR. So I will remove the talk about barriers. Let us compare the expressed views about disability with parallel views about women's rights and rights of minorities.

Case 5a. Our society has learned through its efforts to integrate people with disabilities into the workforce that in many cases doing so need not be unduly burdensome to others.

Case 6. Our society has learned through its efforts to integrate women into the workforce that in many cases doing so need not be unduly burdensome to men.

Case 7. Our society has learned through its efforts to integrate African Americans into the workforce that in many cases doing so need not be unduly burdensome to white Americans.
Case 5a is exactly parallel to Cases 6 and 7. But something sounds very wrong in Cases 6 and 7. What is it?

For a start, are we willing to say that the integration of women and nonwhite races is justified only "in many cases"? No. To affirm civil rights integration only "in many cases" is to suggest that in many (perhaps most) other cases, integration of women and minorities is outweighed by the "burden to men" and the "burden to white Americans." No civil rights advocate would claim this. Nevertheless, FCC makes exactly that claim about disability. This is an extraordinarily grudging acknowledgement that disabled and nondisabled people might (sometimes, somewhere, maybe) live in the same integrated world.

Finally, and most importantly, notice that Case 6 weighs the integration of women against the burdens on men; Case 7 weighs the integration of African Americans against the burdens on white Americans. Is this how we think about integration? I say no. It is divisive. Civil rights (at least as seen by civil rights advocates) does not pit the interests of one group against another group, women against men and blacks against whites. But Case 5 (and 5a)—an ostensibly pro-DR statement—pits the interests of people with impairments against the burdens experienced by "others," that is, by nondisabled people! It's US against THEM—nondisabled people against disabled people. The only way disabled people can justly expect integration (according to the authors of Case 5) is if integration is not unduly burdensome to nondisabled people!

These authors are speaking about disability in a way that they would never speak about other discrimination. No real civil rights advocate would divide the interests of minority and majority groups in this way. Just as Cases 6 and 7 would not be made by someone who was a genuine advocate of civil rights for women and minority races, Case 5 would not have been made by a genuine advocate of DR. It is a condescending and divisive statement by a nondisabled person, acknowledging only that sometimes the rights of those disabled people do not harm us. Only in the case of disability rights is the academy so backwards in its thinking.

10.5 Actual Arguments 3: The Meaning of "Reasonable Accommodation"

Case 4b. The fact that it is costly to remove barriers of discrimination against blacks or gays has no moral weight because no one can have a morally legitimate interest in preserving unjust arrangements. (Achieving a fair distribution of the costs of reform is another matter, of course.) (FCC, p. 284)

Case 4b is a modified quotation of the passage quoted in Case 4a. In the earlier instance the parenthetical sentence was replaced with ellipses because it was irrelevant. In the present context it is crucial. It expresses a reservation regarding the costs of removing unjust social barriers for blacks and gays. It is said that, even though no one can have a morally legitimate interest in preserving unjust barriers, under
certain circumstances unjust barriers might justly remain in force. These circumstances have to do with the costs of reform, and finding a just method of distributing these costs. The outcome may be that unjust social barriers remain in the society because no means can be found of justly allocating the costs of removal. An example might be the (alleged) injustice of job quotas. Quotas would more efficiently remove the injustice of unequal employment among races and sexes better than would the present (nearly unenforceable) prohibitions against bias in hiring. But quotas would do so at the cost of (allegedly) unjust decisions to favor an individual for a job on the basis of the person's membership in a disadvantaged group. The just results, of equal employment opportunity, is (at least) delayed because accelerations of the process would require unjust hiring practices. A second, simpler example would be the fact that large corporations have broader legal responsibilities to document equal opportunity hiring practices than small companies. Even though discrimination is equally unjust in large and small companies, the costs of assuring nondiscrimination are (allegedly) more justly borne by large companies than small companies. These observations are reasonable. There is room for disagreement about what counts as a "just distribution" of the costs of reform, of course.\textsuperscript{4} But the principle is correct; the reform of injustices must be designed not to create too many new injustices, and if such reforms cannot be devised, then the old injustices may "justly" remain in place longer than they would if a just reform were possible.

Now we are ready to consider how FCC interprets the concept of "reasonable accommodation" in the context of the Americans with Disabilities Act (ADA).

**Case 8.** It is important to emphasize that the ADA adds the qualifier that all that is required in the name of equal opportunity is 'reasonable' accommodations. The addition of this qualifier signals a recognition that the interest of employers, of workers who do not have disabilities, and of consumers of the goods and services that public and private organizations produce are also legitimate and should be accorded some weight. (FCC, p. 292)

Notice the contrast between Case 4b and Case 8. Case 4b says that _no one can have a legitimate interest_ in preserving unjust arrangements against blacks and gays (although the difficulties of achieving a fair allocation of costs may complicate the removal of unjust arrangements). But when we discuss people with impairments, Case 8 claims that employers and nondisabled workers _do have a legitimate interest_ in maintaining arrangements that segregate disabled people. Evidence in favor of this legitimate interest is said to be found in the ADA's reference to "reasonable accommodations," a term which limits the immediate responsibilities of employers and places of public accommodation to provide integration. This interpretation of the term "reasonable accommodations" is one of several arguments one can find in FCC that disability rights are not on a par with the rights of women and minorities.

Grassroots disability rights workers argue on the street (literally on the street, because the buildings at issue are inaccessible) with restaurant owners and employers in an attempt to gain access to the goods of our society. Such workers hear the term "reasonable accommodation" incessantly. "Reasonable" is always given heavy emphasis. People who manage inaccessible facilities seem to believe that the
term "reasonable" is free license within the law to give no accommodation at all—after all, isn't the business owner the best person to decide what is reasonable! Isn't delivering a meal in a paper bag to a wheelchair user in front of the restaurant a "reasonable" substitute for installing a ramp (that may cost $500) to allow the person to actually sit in the restaurant in the company of nondisabled people, perhaps his or her friends? According to FCC, the restaurant owner and nondisabled patrons have a legitimate moral interest in opposing the wheelchair user's right to equal access, even though they do not have a legitimate moral interest in opposing the rights of racial and other minorities to equal access. Disability rights are second-class rights.

But what other explanation could there be of the term "reasonable accommodation" in the law? What purpose could the term "reasonable" serve other than acknowledging the legitimacy of the opponents of equal access for people with impairments? FCC has already given a perfectly good answer to this question. The reference to reasonable accommodation need not mark the moral legitimacy of those who oppose equal access. Instead, it marks the difficulties in achieving a fair distribution of the costs of reform. This is clearly stated in Case 4b, as applied to the costs of removing the unjust barriers encountered by blacks and gays. When blacks and gays are forced to wait long periods for justice, the authors say that no one can have a morally legitimate interest in preserving those unjust arrangements (although the difficulty of justly allocating costs can lead to delayed justice). But when the same thing happens to people with impairments, the authors say that employers and nondisabled people have morally legitimate interests in preserving unjust arrangements for disabled people. Why should the same principle that is applied to women and minorities not be applied to people with impairments?

This is an obvious double standard. The authors have a perfectly good analysis of why injustices are sometimes not immediately resolvable—an analysis that does not imply that majorities have a legitimate interest in denying the rights of minorities. Prohibitions on hiring quotas for minorities may slow down justice, but they do not deny justice (because no one can have a legitimate interest in preserving unjust arrangements). The very same rationale could have been given for "reasonable accommodations" for disability. But the authors chose not to offer the same protection to disabled people that they offer to other civil rights groups. Instead, they claimed that the expression "reasonable accommodations" indicates that employers do have a legitimate interest in preserving the unjust segregation of disabled people, even though the same employers do not have a legitimate interest in preserving the unjust segregation of blacks, gays, and women. The DR movement does not share the legitimacy of other civil rights movements. There are many claims for equal access to the goods of society, but some are more equal than others.

10.6 Conclusion

My intent is to illustrate how the DR movement has less support within academic discourse than civil rights for women or other disadvantaged groups. I submit that John Cleese would not have performed or endorsed a Zip Coon-era joke
that exploited racist assertions about verbal incompetence, but he did perform and endorse an identical joke about people with cerebral palsy. I submit that the authors of FCC would not have claimed that the integration of women and racial minorities is merely "in many cases not unduly burdensome to others," but they make exactly that claim about disabled people. Nor would these same authors have claimed that dominant groups (men or racial majorities) have a morally legitimate interest in maintaining segregationist arrangements against women or racial/ethnic minorities. But they claim that nondisabled people have exactly that interest in maintaining the segregation of disabled people.

The academy may not genuinely accept equality for women, racial/ethnic minorities, or gays and lesbians. However, the discourse of academia does, at least, pretend to respect those civil rights. It does not even pretend to respect similar rights for people with impairments. If other civil rights groups are currently at the level of merely verbal support from the academy, the DR movement is at the level of not even verbal support for its rights.

Notes

1. An example is the "storm" of protest in response to former Harvard President Lawrence H. Summers's comments in 2005 suggesting that the low number of female science faculty might be due to innate differences between the sexes concerning science and math abilities (Dillon & Rimer, 2005).

2. This terminology follows Amundson and Tresky (2007). It will be noticed that this is a version of the impairment/disability distinction used within the DR movement. This version avoids the terminological confusions caused by the convention that "disability" means socially-conditioned disadvantages of impairments.

3. Indeed, I used the same oppressive technique as Fanon in an early DR paper, stigmatizing others as a means of defending oneself against stigma. I argued that people with impairments should not be treated like ill people or frail elderly people. See Amundson (1992) and Wendell (1996, Chapter 1) as a corrective.

4. In fact I do not agree with these analyses; quotas are perfectly fine with me. But they appear to be the kind of thing that FCC is alluding to in distinguishing between justice and the costs of remedying injustice.

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References


