

DISABLING POLITICAL THEORY:  
ESSAYS AT THE INTERSECTION OF POLITICAL THEORY AND  
DISABILITY STUDIES

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## **ABSTRACT**

AMBER KNIGHT: Disabling Political Theory  
(Under the direction of Michael Lienesch and Susan Bickford)

The purpose of this project is to establish disability as an integral subject of inquiry for political theorizing. To date, there has been scant interaction between the academic disciplines of political theory and disability studies, and this dissertation proposes that each has much to learn from the other. The chapters in this dissertation draw from several schools of thought to evaluate the political nature of disability and the often disabling nature of politics. While the chapters are loosely united by a shared commitment to interdisciplinary theorizing, the guiding research questions and objectives of each chapter differ considerably. Specifically, the first chapter analyzes practices of disablism and ableism in John Locke's writings, demonstrating how Locke dehumanizes people with disabilities, ignores their heterogeneity, and erases their political agency by deploying sweeping, monolithic portrayals of disability in order to bolster his arguments about human understanding and political personhood. The second chapter critically examines John Rawls's theory of justice as fairness, Eva Kittay's formulations of justice as caring, and Martha Nussbaum's writings on the capabilities approach, and concludes that a revised combination of the care and capabilities approach would be the most responsive to the situation of the disabled. The third chapter strategizes about how to overcome informal barriers to inclusion that persist even after disabled people are granted the legal right to engage in democratic deliberations. Using Nancy Fraser's concept of

“participatory parity,” it suggests that a truly inclusionary democracy requires a more expansive model of political deliberation, one that can accommodate alternative (even non-verbal) modes of political communication through practices of translation. Finally, the last chapter adjudicates between competing conceptions of vulnerability, focusing on the writings of Alasdair MacIntyre, Michael Sandel, and Judith Butler, to rethink dominant political concepts— equality, solidarity, and reciprocity— and consider what kinds of structural political reforms would best suit the needs and capacities of vulnerable subjects.

To my parents, Juliette and Todd Knight, from whom I get my love of knowledge.

For Jason, my partner in life and learning.

And in loving memory of David McAlpine.

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and, when I made the choice to go to college and graduate school, they then provided me with the love, encouragement, and financial support necessary to sustain my academic pursuits. I am eternally grateful for all of the sacrifices that they have made so that I could fulfill my potential. In addition, my siblings patiently listened to all of my infinite complaining about graduate school, and even talked me off the ledge whenever I daydreamed about quitting, so I thank them for their unconditional love and kindness. Finally, I could not have completed this dissertation without the unwavering love, cooking, editing, and care that Jason Windett— my dear life partner— provided along the way.

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## ABBREVIATIONS

Judith Butler

- BM Bodies that Matter: On the Discursive Limits of “Sex”*  
*CHU Contingency, Hegemony, Universality: Contemporary Dialogues on the Left*  
*ES Excitable Speech*  
*FW Frames of War: When is Life Grievable?*  
*GAO Giving an Account of Oneself*  
*PL Precarious Life: The Power of Mourning and Violence*  
*UG Undoing Gender*

Eva Kittay

- LL Love’s Labor: Essays on Women, Equality, and Dependency*

John Locke

- EHU An Essay Concerning Human Understanding*  
*LCT A Letter Concerning Toleration*  
*2T The Second Treatise*

Alasdair MacIntyre

- DRA Dependent Rational Animals: Why Human Beings Need the Virtues*  
*SC “The Need for a Standard of Care”*

Martha Nussbaum

- CC Creating Capabilities: the Human Development Approach*  
*FJ Frontiers of Justice: Disability, Nationality, Species Membership*

John Rawls

- JF Justice as Fairness*  
*PL Political Liberalism*  
*TJ A Theory of Justice*

Michael Sandel

- CP The Case against Perfection: Ethics in the Age of Genetic Engineering*  
*DD Democracy's Discontent*

## CHAPTER ONE

### INTRODUCTION

“I am interested in achieving a society where eyesight is no more consequential for life chances than eye color” —Adrienne Asch, 2004

As a child born without a left hand, I grew up fascinated by the figure of Helen Keller. Grappling with my own experience of being labeled different, I found the sentimentalized story of the famed deaf-blind girl who one day realized that the motions her teacher was making on the palm of her hand symbolized the idea of “water” to be heartwarming and inspirational. Yet throughout my early fascination with Helen Keller, I never questioned why her story almost always ended with this climactic scene. One can imagine my surprise when, as a young adult, I discovered that Keller’s story did not end at the water pump at Tuscumbia, Alabama, but instead included a rich, controversial, and full life marked by a commitment to domestic and international political activism. The one-dimensional figure that I had come to know, mostly through children’s literature and the film *The Miracle Worker*, had erased Keller’s political agency in the Socialist Party of America, her speeches in support of the Industrial Workers of the World, her active positions in favor of female suffrage and birth control, her role as an international ambassador for the American Federation of the Blind, and the fact that she was one of the co-founders of the American Civil Liberties Union.<sup>1</sup> Moreover, this flattening of her life

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<sup>1</sup> For a fuller history of Helen Keller’s political activism, see Kim Nielsen, *The Radical Lives of Helen Keller* (New York: New York University Press, 2004). See also Kim Nielsen, ed. *Helen Keller: Selected Writings* (New York: New York University Press, 2005).

could not easily be explained as an oversimplified caricature for children, for many adults continue to imagine Helen Keller in her role as an innocent child, depicting her as a symbol for overcoming disability, rather than flourishing as a person with a disability.

On learning about the political life of Helen Keller, I began to question why our shared cultural imaginary continues to ignore her politicized activities. I also questioned why her story was presented as *the* story of disability, as if the experience of living with a disability was unique to this isolated individual. More recently, the depoliticization of Keller's life has led me to reflect critically on my own academic discipline of political theory as well, for disability theorizing has been largely absent from most of its mainstream texts. Feminist theorists, queer theorists, critical race scholars, neo-Marxists, and postcolonial theorists all have made important critical interventions into the Western canon of political thought to: give voice to historically marginalized groups; challenge prevailing theories modeled around the experiences and interests of European, white, bourgeois, heterosexual men; and politicize issues that had been unfairly deemed apolitical or ghettoized within the private sphere. Yet there has been little indication that people with disabilities have anything to contribute to these conversations. Indeed, throughout political theory, with few exceptions, it is as though disabled bodies and experiences only exist (if they exist at all) in spaces outside of politics as usual.<sup>2</sup> And to the extent that contemporary political theorists have turned to disability at all in

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<sup>2</sup> Notable exceptions include Martha Minnow and Iris Marion Young, who offer sophisticated and thorough considerations of disability, along with other categories of otherness, as they examine the problem of difference in relation to political justice. See Martha Minnow, *Making All the Difference: Inclusion, Exclusion, and American Law* (Ithaca: Cornell University Press, 1990); and, Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990).

addressing more general questions about political life, many have misrepresented or oversimplified it.<sup>3</sup>

In search of answers, I turned to the field of disability studies. Disability studies is an emergent discipline that continues to gain momentum and broader visibility within academia. Increasingly, its courses and programs are being offered in Britain, Canada, Australia, and the United States, while its major journals in disability studies— *Disability and Society* and *Disability Studies Quarterly*— publish a growing range of articles on the topic. As an interdisciplinary field of inquiry, disability studies has already had an impact on scholarship in disciplines such as sociology, anthropology, education, and literature. In addition, as with the relationship of women's studies to feminist politics, disability studies is characterized by its engagement with disability activism.

It was through my reading of this literature that I encountered feminist philosophers— including Rosemarie Garland-Thomson (1994), Susan Wendell (1996), and Helen Meekosha (1998), among others— who have added a gender perspective on disability, while also integrating insights from the disability studies literature into their respective feminist scholarship.<sup>4</sup> Although early work of disability scholars largely

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<sup>3</sup> Because political theorists are not immune from stereotypes about impairment and disability, many have invoked it in problematic ways to further their point of view. For example, Iris Marion Young claims that “Women in sexist society are physically *handicapped*. Insofar as we learn to live out our existence in accordance with the definition that patriarchal culture assigns to us, we are physically inhibited, confined, positioned, and objectified.” Iris Marion Young, “Throwing like a Girl,” in *On Female Body Experience* (Oxford: Oxford University Press, 2005), 42, emphasis added. While it may seem unfair to single out one passage in an essay that otherwise champions human dignity, such passages are especially telling because the language Young chooses and the assumptions implicit in their use— she equates the physical condition of impairment to being “inhibited” and “objectified”— are deeply problematic from a disability perspective because it further reinforces the stereotype that people with disabilities are tragic victims instead of active subjects capable of political resistance.

<sup>4</sup> Rosemarie Garland-Thomson, “Redrawing the Boundaries of Feminist Disability Studies: A Review Essay,” *Feminist Studies* 20 (1994): 583-595. See also Rosemarie Garland-Thomson, *Extraordinary Bodies: Figuring Physical Disability in American Culture and Literature* (New York: Columbia University Press, 1997); Susan Wendell, *The Rejected Body: Feminist Philosophical Reflections on Disability* (New

assumed a male bodily experience, feminist theorists have pointed out that cultural expectations of marriage arrangements, childbearing, and career are very specifically structured along gender lines in ways that constrain and offer opportunities to people with disabilities. Conversely, feminist theorists have gained invaluable insights from integrating a disability perspective into their work. In the words of Rosemarie Garland-Thomson, “Considering disability sheds light on such feminist concerns as the politics of appearance, the ethics of selective abortion and genetic testing, the relation between femininity and embodiment, the commercialization of health and fitness, issues of caretaking and caregiving, the surgical normalization of bodies, the ideology of normalcy, and the politics of access and inclusion.”<sup>5</sup>

This dissertation is indebted to the pioneering efforts of these disability and feminist theorists, and it continues in this tradition of interdisciplinary scholarship. I contend that a disability perspective will render political theory richer, more coherent, and more relevant. Scholars will have to seriously consider the ways in which the needs and experiences of healthy, prime-of-life, able-bodied citizens have been overrepresented in considerations about how political institutions and practices should be designed. In the same way, they will have to accept that prevailing understandings of key concepts in political theory— justice, liberty, equality, and autonomy— take on new meanings when understood from the perspective of a person living with a disability. Similarly, the field of disability studies stands to gain from interdisciplinary collaboration as well. If serious

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York: Routledge, 1996); Helen Meekosha, “Body Battles: Bodies, Gender and Disability,” in *The Disability Reader: Social Science Perspectives*, Tom Shakespeare, ed. (New York: Continuum, 1998), 163-179.

<sup>5</sup> Rosemarie Garland-Thomson, “Feminist Disability Studies,” *Signs* 30 (2005): 1559.

attention is paid to debates on political issues pertaining to citizenship, rights, embodiment, equality, difference, justice, and the like, disability scholars and activists will be better equipped to think through issues such as how to better organize the disability rights movement, how to continue to accommodate those with impairments in political life, and how to decide what kinds of claims should be made in their interest on fellow citizens and the state. Thus, the contents of this dissertation are committed to exploring the political nature of disability, and the too often disabling nature of our politics.

## *I. DEFINING DISABILITY AND IMPAIRMENT*

It is important to define key terms from the outset. Defining disability is a difficult endeavor, for the meanings of disability and impairment are unstable, and definitions vary across cultural and historical contexts.<sup>6</sup> For example, during the Middle Ages, many impairments were thought to have supernatural or demonological causes. The devil was believed to cause epilepsy, and blindness was assumed to be the byproduct of sinning.<sup>7</sup> By contrast, the meaning of disability changed radically with the onset of industrialism. Disability studies scholar Lennard Davis argues that people in industrialized societies in Europe during the seventeenth and eighteenth centuries sought to create a universal worker whose physical characteristics would be uniform, and subsequently disability in industrialized societies became increasingly regarded as a

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<sup>6</sup> For example, historian Henri Stiker demonstrates that the meaning of disability shifts across time in relationship to Western cultural values of morality, and in this way labels and descriptions of disability reveal deep value judgments. Henri Stiker, *A History of Disability* (Ann Arbor: University of Michigan Press, 1997).

<sup>7</sup> David Braddock and Susan Parish, “An Institutional History of Disability,” in *Handbook of Disability Studies*, eds. Albrecht et. al. (London: Sage Publications, Inc., 2001), 18.

deviation from the “normal” citizen-worker.<sup>8</sup> There are also examples of variation in the meanings of disability and impairment within the same historical epoch across cultures. Anthropologists have shown that the Quechua-speaking people in the Kallawaya region of the Andes still consider most people with disabilities to be holy and sacred.<sup>9</sup> These examples point to the fact that one must establish an explicit connection between the social context in which people live and the ways in which disabilities are experienced, identified, and defined.

As a consequence of the ambiguity and fluidity of language, multiple and occasionally contradictory definitions of disability and impairment coexist within medical, political, and academic institutions. Within the medical literature, disability is often used synonymously with impairment to denote a range of conditions as physiologically diverse as spina bifida, cerebral palsy, mental retardation, autism, the absence of limbs, Parkinsons, blindness, Down syndrome, and arthritis. Furthermore, these physical, intellectual, cognitive, and psychiatric impairments are classified in a variety of ways. Impairments are either congenital or acquired, and they can also be categorized according to their degree— mild, moderate, and severe. Some are progressive (like muscular dystrophy and cystic fibrosis), some are episodic (like epilepsy), some are temporary (like a broken leg), and some are permanent (like mental retardation or the loss of a limb).

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<sup>8</sup> Lennard Davis, *Enforcing Normalcy: Disability, Deafness, and the Body* (London: Verso, 1995), 24.

<sup>9</sup> Ina Rosing, “Stigma or Sacredness: Notes on Dealing With Disability in Andean Culture,” in *Disability in Different Cultures: Reflections on Local Concepts*, eds. Gabriele Weight et al. (New Brunswick: Transaction Publishers, 1999).



Similarly, there is no consensus as to what constitutes a disability within political institutions. According the Americans with Disabilities Act, 1990 (ADA), “A charging party has a ‘disability’ for purposes of the ADA if she or he (1) has a physical or mental impairment that substantially limits a major life activity, (2) has a record of such an impairment, or (3) is regarded as having such an impairment.” Thus, anatomical functionality is at the heart of the ADA’s definition, so this definition is closely related to the medical model of disability. The United Nations’ definition of disability is somewhat different:

*Impairment:* Any loss of abnormality of psychological, or anatomical structure or function.

*Disability:* Any restriction or lack of ability to perform an activity in the manner or within the range considered normal for a human being.

*Handicap:* A disadvantage for a given individual, resulting from an impairment or disability, that limits or prevents the fulfillment of a role that is normal, depending on age, sex, social and cultural factors, for that individual.

This definition of disability remains relatively similar to that of the ADA, in that it concerns itself with anatomical functionality. However, the *condition* (impairment) is assumed to be an individual circumstance that is understood to be separate from the *functional* (disability) as well the *social and cultural* (handicap) byproducts of the condition. Hence, this definition moves beyond a focus on the individual body to consider how social and cultural practices impact political opportunities.

In addition, disability scholars continue to grapple with the meanings of disability and impairment, debating what each term means and what characterizes the relationship between the two concepts. Several contemporary disability scholars are proponents of what has come to be known as the “social model of disability.” The social model is a set

of principles that a group of activists in Britain advanced in the late 1970s in order to counter medicalized conceptions of disability. Whereas the medical model understands disability to be the natural manifestation of an individual physiological impairment, proponents of the social model argue that disability is a form of social disadvantage which is *imposed on top of one's impairment*. Disability is not a biological given; it is socially constructed from biological diversity. The social model relies on a conceptual distinction between impairment and disability, where impairment refers to a physical condition characterized by a range of corporeal limitations, and disability refers to the social disadvantages and exclusions that people with impairments encounter in the realms of employment, housing, education, and civil rights. Lennard Davis succinctly describes the relationship between disability and impairment:

Disability is not so much the lack of a sense or the presence of a physical or mental impairment as it is the reception and construction of that difference... An impairment is a physical fact, but a disability is a social construction. For example, lack of mobility is an impairment, but an environment without ramps turns that impairment into disability... a disability must be socially constructed.<sup>10</sup>

Most proponents of the social model hold that even though some bodies may be functionally impaired, their physiological condition does not translate into social disadvantage or unnecessarily limit an individual's opportunities or life chances. In this way, disability is not something you simply have, or do not have. Rather, it is something

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<sup>10</sup> Lennard Davis, "Dr. Johnson, Amelia, into the Discourse of Disability in the Eighteenth Century," in *"Defects": Engendering the Modern Body*, eds. Helen Deutsch and Felicity Nussbaum (Ann Arbor: University of Michigan Press, 2000), 56.

that happens when one group of people create barriers by designing the world for their style of living.<sup>11</sup>

Yet the social model of disability has been challenged in recent years. One prominent critic is Mairian Corker, who argues that the bifurcation of impairment and disability is analogous to the feminist bifurcation of sex and gender, in that it reinforces a false nature/ culture binary relationship. She finds it problematic that the body is assumed to be “given” and prediscursive because the “...attempt to transform pathology into identity...within a theoretical framework of binary thought regards impairment as inherently dis-valuable.”<sup>12</sup> Here Corker is concerned that the social model fails to theorize the physical, flesh-and-blood body. This failure may cause disability theorists to ignore the experiences of severely impaired individuals who are heavily dependent upon medical care. While I acknowledge that the impairment/disability distinction is a forced heuristic division with clear limitations, the social model is helpful insofar as it politicizes disability and successfully shifts the assumed site of rehabilitation from the individual body to the social and political environment. Thinking about disability as a shared experience of discrimination and oppression, instead of as a condition of inherent corporeal inferiority, enables political theorists to analyze disability as a socially constructed and pervasive cultural system, one that needlessly stigmatizes certain kinds of bodily variation. In my view, approaching disability as a social construction is an important theoretical step toward moving its study away from pathology and into politics.

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<sup>11</sup> For more on the social model of disability see Michael Oliver, *The Politics of Disablement* (London: Macmillan, 1990). See also Tom Shakespeare, “The Social Model of Disability,” in *The Disability Studies Reader*, ed. Lennard Davis (New York: Routledge, 2006).

<sup>12</sup> Mairian Corker, “Sensing Disability,” *Hypatia* 16 (2001): 46.

In sum, defining disability is not merely an analytic exercise.<sup>13</sup> Definitions of disability affect the provision of benefits and services to those who meet required criteria, so disabled citizens have a stake in how disability is classified. Agencies and insurance companies also maintain vested interests in who receives benefits, and who does not. Definitions of disability are important for those who are organizing people with disabilities in the disability rights movement, and for those who are serving them in non-profit organizations. Above all, definitions of disability most certainly affect people's sense of self. Thus, an important task of political theory is to critically interrogate the political reasons why disabilities are defined in certain ways, and who has the power to define them.

## II. *POLITICIZING DISABILITY*

Political theorist Wendy Brown argues that “political theory takes its bearings from a tacit presumption of the relative boundedness and autonomy of the political.”<sup>14</sup> To claim that disability should be a central concern of political theorizing, therefore, is to claim first that disability is a distinctly political issue. Why is disability political? First, impairment and disability are political when they are understood as byproducts of political choices and arrangements. Many impairments are acquired by living in the world, and the world is a unjust place. Wars, insufficiently regulated working conditions,

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<sup>13</sup> Susan Wendell comments on the politics of definition: “How a society defines disability and whom it considers disabled reveal a great deal about that society's attitudes and expectations concerning the body, what it stigmatizes and what it considers ‘normal’ in physical appearance and performance, what activities it takes to be necessary and/or valuable and for whom, and its assumptions about gender, age, race, caste, and class.” Wendell, *The Rejected Body*, 32.

<sup>14</sup> Wendy Brown, “At the Edge,” *Political Theory* 30 (2002): 557.

weak environmental policies, inadequate healthcare systems, etc. all generate illnesses and poor physical and cognitive functioning. When certain groups of people are exposed to impoverished, dangerous, and unjust political environments, they are more likely to develop illnesses or experience debilitating injuries. In addition to literally producing impairments themselves, political arrangements can create or dismantle disabling barriers. While human beings in their infinite diversity have bodies that differ, people with physical, cognitive, and psycho-emotional disabilities are understood as disabled because their bodily differences are marked as aberrant within the political community. The idea that impairment is a diminished state of being justifies exclusionary public planning. Subsequently, the social, political, and economic environments that impaired bodies inhabit are often designed without their unique experiences and needs in mind. In addition to discriminatory public planning, several laws have also historically denied people with disabilities the right to marry, reproduce, live in an area of one's choosing, and exercise citizenship rights in the public sphere.

Second, disability is political because people with disabilities comprise a distinct demographic group. The idea that impairment affects a small portion of the population is no longer sustainable. According to the most recent data from the United States Census Bureau, 54.4 million of the 291.1 million people in the United States in 2005 had some level of disability, and 35 million (around 12 percent of the general population) had a severe disability.<sup>15</sup> Disability studies scholar Lennard Davis notes that “People with disabilities make up the largest physical minority within the United States— One would never know this to be the case by looking at the literature on minorities and

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<sup>15</sup> Matthew Brault, “Americans with Disabilities: 2005,” *U.S. Census Bureau* (2008): <https://www.census.gov/prod/2008pubs/p70-117.pdf>.

discrimination.”<sup>16</sup> Although often unorganized, people with disabilities are nevertheless united by a shared experience of discrimination. As such, they continue to have lower education rates, lower incomes, higher unemployment rates, and less social influence than those considered nondisabled.<sup>17</sup>

This persistent marginalization has prompted people with disabilities to become politically active. The disability rights movement is a global political movement of a relatively small but growing number of people with disabilities, and their allies, who have begun to establish their own organizations and engage in political campaigns to challenge discrimination against people with disabilities. From the outset, the objectives of the disability rights movement in the United States have been multifaceted, and like other social movements, disability activists often pursue competing and contradictory goals. Despite important cleavages, the movement is rooted in the core belief that the state had a responsibility to extend formal citizenship rights to people with disabilities. Historian Joseph Shapiro characterizes the disability movement in the United States as follows:

The disability movement is a mosaic movement... Diversity is its central characteristic. No one leader organization can claim to speak for all disabled people. It is accepted, as a matter of course, that members of the disability cause will hold shades of belief and not hew to an overriding orthodoxy... Without one highly visible leader, the disability movement has gone largely unnoticed by nondisabled people. But by its acceptance of differences, the campaign for disability rights has forged a powerful coalition of millions of people with disabilities, their families, and those that work with them.<sup>18</sup>

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<sup>16</sup> Lennard Davis, ed., *The Disability Studies Reader* (New York: Routledge, 1997), 1.

<sup>17</sup> Jonathan Young, ed., “Progress Report 2011,” *National Council on Disability* (2011): [http://www.ncd.gov/progress\\_reports/Oct312011](http://www.ncd.gov/progress_reports/Oct312011).

<sup>18</sup> Joseph Shapiro, *No Pity: People with Disabilities forging a New Civil Rights Movement* (New York: Random House, 1993), 11.

Hence, we can think about people with disabilities as a political group with a shared experience of discrimination, and as a political movement pursuing a variety of objectives.

Third, disability is political since impairment is an unavoidable part of the human condition. The truth is that anyone can become disabled at any time because the human body is inescapably susceptible to a range of impairments, and in all likelihood we will all become disabled if we live long enough. Hence, all people are inevitably physically, mentally, and emotionally dependent for extended periods of our lives: as infants and small children, when old, and when ill or injured. If we accept the principle that we are all likely to experience varying degrees of impairment at different points along the lifecycle, disability is understood as a dimension of human diversity. This line of thinking moves beyond thinking about disability as something unique to a specific group, and instead conceptualizes impairment as a permanent feature of political life, one that must be accommodated into shared political practices and institutions.

Fourth, in the vein of the feminist mantra that “the personal is political,” we can also think about the private experience of impairment as a political occurrence, one which is experienced very differently across gender, racial, and class lines. In this way, political analyses may also focus on the subjective experiences of suffering, pain, rejection, desire, joy, and achievement. While it may be important to think about disability as socially constructed in many contexts, the individual bodily experience of living with an impairment should not go overlooked. A narrow focus on the socially constructed disabled body cannot adequately account for the totality of the disabled experience, so political theorists must also think through the ways in which political agents manage pain

and bodily discomfort, internalize able-bodied norms, and negotiate social stigma in their private and public lives.

Finally, disability is political as a matter of public policy. Following the lead of the International Year of Disabled People in 1981, many political administrations responded to the situation of those living with disabilities through legislation. In the United States, the Americans with Disabilities Act (1990) created a civil rights statute that prohibits discrimination on the basis of disability. Policies such as the Ticket to Work and Work Incentives Improvement Act (1999) have invested resources to include people with disabilities in the workforce— through job training, vocational rehabilitation, job placement and career counseling. In addition, public entitlement programs such as Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) compensate for unemployment or supplement disabled peoples' incomes. For those who qualify, Medicare and Medicaid have also helped shoulder the economic burden of many impairment related health care costs. With the passage of the Individuals with Disabilities Education Act (IDEA) in 1990, children with disabilities were provided the funds for a “free and appropriate education” in “the least restrictive environment.” Furthermore, the Rehabilitation Act of 1973 supported the Vocational Rehabilitation Program assists states in providing discretionary funding for disabled people to live in Centers for Independent Living. From a theoretical perspective, these policies raise important questions: what is the relationship between citizenship and wage earning? How do cultural narratives surrounding need, dependency, and poverty shape policy outcomes? And what is the power relationship between the legislators of public policy and the recipients of such measures?



In sum, a rich variety of intellectual and political issues are raised by considering the phenomenon of disability. Confronting these issues has continuously increased my appreciation for the insights that progressive political theorists have already offered about the workings of political oppression, the factors perpetuating inequality, and effective strategies for resistance. Even though the following chapters offer critical interventions into political theory, I continuously draw on these insights to theorize about how to achieve more just, egalitarian, liberatory political order. I draw on them because, in the words of Helen Keller, “I do not like this world as it is. I am trying to make it a little more as I would like to have it.”<sup>19</sup>

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<sup>19</sup> Quoted in Kim Nielsen, *The Radical Lives of Helen Keller* (New York: New York University Press, 2004).

## CHAPTER TWO

### (DIS)ABLEISM IN JOHN LOCKE'S LIBERALISM

The issue of disability has received little attention from students of the history of political theory. While ample criticism has been leveled at the Western canon by feminists, neo-Marxists, and critical race scholars, political theorists have said too little about the absence of attention to disability, and they have not done enough in using the issue to reexamine and challenge prevailing interpretations of historical texts.<sup>1</sup> The absence of contemporary critique should not be taken as an indication of an absence of historical material on the topic. On the contrary, some major canonical texts explicitly devalue people with disabilities and even go so far as to advocate their extermination from political communities, while others subtly perpetuate the idea that able-bodiedness is the natural order of things and the desirable way of being in political and social life.<sup>2</sup>

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<sup>1</sup> Political theorists Barbara Arneil and Martha Nussbaum are notable and important exceptions, although their analyses of Locke's writings, in particular, are brief. In addition, Carlos Ball, a legal scholar, uses disability as a lens to interpret Locke's writings on autonomy. See Barbara Arneil, "Disability, Self Image, and Modern Political Theory," *Political Theory* 37 (2009): 218-242; Carlos Ball, "Autonomy, Justice, and Disability," *UCLA Law Review* 47 (1999-2000): 599-651; Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge: The Belknap Press, 2006).

<sup>2</sup> While some theorists in ancient and modern texts openly espouse fear and resentment towards people with disabilities, few contemporary theorists remark on such telling passages. For example, in the *Politics*, Aristotle argues that children with disabilities should be left to die so as to preserve the health of the body politic: "As to the question of whether to rear offspring or expose them, there should be law against rearing deformed ones" (1335b 20). Centuries later, Nietzsche echoed Aristotle's sentiment in *Twilight of the Idols*, writing that "If individuals represent the descending development, decline, chronic degeneration, sickness... they are of little value, and it is only fair that they should take away as little as possible from those who have turned out well. They are nothing but...parasites..." ([1889] 1997, 69).

One does not have to dig very deeply to notice that writings in political theory abound with denigrating disability metaphors: blind justice, deaf ears, crippling fear, paralyzed wills, and lame ideas.

In general, I argue that the treatment of disability in political theory matters not only for what it says about people with disabilities, but because it reflects fundamental assumptions about political themes relating to human nature, citizenship, and political community. To illustrate, this article examines the writings of John Locke from a disability perspective. I have chosen to focus specifically on Locke's writings for several reasons. First of all, Locke writes about disability at some length, especially in *An Essay Concerning Human Understanding* (1690) and to a lesser extent the *Second Treatise of Government* (1690).<sup>3</sup> As a trained physician who studied and practiced medicine throughout his life, his medical notebooks show a special interest in multiple kinds of impairment, references to which also appear repeatedly in his political writings.<sup>4</sup> In addition, Locke's writings on disability are of interest to historians of political thought because themes of disability actually shape his views on political personhood, natural rights and property, and the role of the government. Finally, Locke's exclusionary political prescriptions are relevant for contemporary disability theorists because, as this analysis will make clear, the idea that the government should passively protect natural rights is problematic from a disability perspective.

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<sup>3</sup> *The Two Treatises of Government* was originally published anonymously in 1689 by John Locke.

<sup>4</sup> As historian Kenneth Dewhurst notes, most political theorists have focused their attention on Locke's political and religious theories while ignoring his long experience with medicine and science, and its influence on his empiricist philosophy. Kenneth Dewhurst, *John Locke: Physician and Philosopher: A Medical Biography* (London: Wellcome Historical Medical Library, 1963).

Ultimately, this reading will illuminate two interrelated central points. First, Locke frequently falls into the analytic practice of employing representations of disability to develop his empiricist epistemology and explain his understanding of political personhood. I find his strategic use of disability to be particularly problematic because it dehumanizes people with disabilities, erases their political agency, and also perpetuates the fiction that citizens are, or should be, fully rational and self-sufficient beings. Here my reading is indebted to the work of theorists concerned with alterity, or the social construction of “otherness,” specifically the writings of Chandra Mohanty. In “Under Western Eyes: Feminist Scholarship and Colonial Discourses” (1988), Mohanty analyzes Western feminist discourse in order to interrogate the discursive production of “a composite, singular ‘third world woman.’”<sup>5</sup> Mohanty is interested in these discursive constructions because such images both rob women in the Global South of their historical and political agency, and, when used as a point of contrast to women in the Global North, perpetuate false imperialist assumptions about Western women as “secular,” “liberated,” and “having control over their lives.”<sup>6</sup> In the same way that the image of “the third world woman” was deployed as the inverted mirror-image of the fictitiously “liberated woman” of the Global North, Locke repeatedly deploys sweeping, monolithic portrayals of disability to serve as negative counterpoints to his ideal rational and self-sufficient citizen. What this analysis intends to show is that Locke’s repeated references to mental disability (idiots, changelings, naturals), psycho-emotional disability (madmen), and physical impairment (monsters) serve to maintain the fiction of nondisabled rationality

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<sup>5</sup> Chandra Mohanty, “Under Western Eyes: Feminist Scholarship and Colonial Discourses,” *Feminist Review* 30 (1988): 62-63.

<sup>6</sup> Chandra Mohanty, “Under Western Eyes,” 79-81.

and self-sufficiency, a fiction that is essential to Lockean theory because ideal rationality and self-sufficiency are in fact impossible for any real person to embody.

Second, this analysis also demonstrates that Locke's liberal political system—which advocates limited government intervention and a strict separation between public and private realms—was designed in such a way that people with disabilities cannot be easily accommodated. While the classical liberal individual of social contract theory is purportedly a universal, abstract, disembodied subject who could stand in for any citizen within the liberal polis, many political theorists have persuasively argued that the liberal individual is not universal, abstract, or disembodied. Rather, the liberal subject is a socio-historically located type of person. As early as 1962, C.B. Macpherson (1962) famously argued that Locke's liberal subject is a specifically bourgeois man. In *The Sexual Contract* (1988), Carole Pateman persuasively showed that the liberal subject is male. Charles Mills extended Pateman's line of thought in *The Racial Contract* (1997) to argue that the classical liberal subject of social contract theory is necessarily white. This chapter contributes to this body of literature by suggesting that Locke's liberal political system was specifically and exclusively designed to protect the natural rights of the rational, self-sufficient, and healthy able-bodied citizen.

To develop these arguments, this chapter first consults the disability studies literature to define “disablism” and “ableism,” and to explore the relationship between these terms. These definitions serve in turn as the conceptual foundation for this interpretation of Locke. Next, it critically examines the way in which Locke relies on disablist language and images in order to construct his arguments on epistemology and personhood in *An Essay Concerning Human Understanding* (1690), and other works.

Next, the chapter analyzes the *Second Treatise* (1690) to consider whether or not people with disabilities can be accommodated within Locke's conception of political society, ultimately suggesting that it is exclusively created by able-bodied citizens for able-bodied citizens. This essay shows how Locke's assertion that government should passively protect natural rights, in the form of rights of liberty and property, is problematic from a disability perspective. Drawing from contemporary theorists, specifically Susan Wendell and Alasdair MacIntyre, the analysis contends that an adequate account of rights must theorize the relationship between the individual body and its external environment, while also considering rights as artifacts of particular social institutions and arrangements instead of "natural," pre-given entitlements. It concludes by making the case that a more activist state is necessary to manufacture and protect the political rights of people with disabilities.

## I. *DISABLISM AND ABLEISM*

While the terms disablism and ableism are often used without much precision, Fiona Campbell, author of *Contours of Ableism: The Production of Disability and Abledness* (2009), clearly delineates what these terms mean and how they relate to each other. Campbell argues that scholars concerned with disablism build from other theories of alterity to examine the attitudes and practices that contribute to the social construction of the inferior "other." Thinking through the processes of alterity, Campbell succinctly defines disablism as "a set of assumptions (conscious or unconscious) and practices that promote the differential or unequal treatment of people because of actual or presumed

disabilities.”<sup>7</sup> Campbell’s definition moves beyond a narrow focus on an individual’s intentions to mistreat people with disabilities in order to address the unconscious structural discrimination of those with impairments. Thus, due to disablism persons with a range of impairments are cast as inferior or somehow “lesser” in human terms, through denigrating language like “retard,” popular representations of impaired people as tragic and helpless (think Tiny Tim or Jerry’s Orphans), and prejudicial practices, such as when an employer refuses to hire somebody qualified for a job simply because he or she uses a wheelchair.

Ableism, on the other hand, perpetuates the idea that nondisabled individuals set the standard for normal living. According to Campbell, an ableist society presumes that human beings are, or at least should be, in full health and perfectly capable of walking, seeing, hearing, and exercising reason. Hence, she defines ableism as “a network of beliefs, processes and practices that produce a particular kind of self and body (the corporeal standard) that is projected as the perfect, species-typical... human.”<sup>8</sup> Such ableist attitudes and practices result, in turn, in the exclusionary design of public and private places and services, education, and political life.<sup>9</sup> Like other structures of power— such as patriarchy and white supremacy— ableism unevenly distributes power

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<sup>7</sup> Fiona Kumari Campbell, *Contours of Ableism: The Production of Disability and Abledness* (New York: Palgrave Macmillan, 2009), 3-4.

<sup>8</sup> Campbell, *Contours of Ableism*, 5.

<sup>9</sup> Philosopher Susan Wendell describes the design of an ableist society in the following passage: “Much of the public world is also structured as though everyone was physically strong, as though all bodies were shaped the same, as though everyone could walk, hear, and see well, as though everyone could work and play at a pace that is not compatible with any kind of illness or pain, as though no one were ever dizzy or incontinent or simply needed to sit or lie down. (For instance, where could you rest for a few minutes in a supermarket if you needed to?) Not only the architecture, but the entire physical and social organization of life tends to assume that we are either strong and healthy and able to do with the average young, nondisabled man can do or that we are completely unable to participate in public life.” Susan Wendell, *The Rejected Body* (New York: Routledge, 1996), 39.

across lines of socially constructed embodied difference, in such a way that those deemed able-bodied are socially privileged.

The assumption that able-bodied individuals are and/or should be the standard of normal living contributes to what Robert McRuer has termed “compulsory able-bodiedness.” In *Crip Theory: Cultural Signs of Queerness and Disability* (2006), McRuer explains how and why an ableist culture presumes and perpetuates the idea that able-bodied identities and able-bodied perspectives are both normative and preferable. In describing the term, McRuer writes,

[Able-bodiedness] offers normative . . . positions that are intrinsically impossible to embody, and the persistent failure to identify fully and without incoherence with these positions reveals [able-bodiedness] itself not only as a compulsory law, but as an inevitable comedy. Indeed, I would offer this insight into [able-bodied identity] as both a compulsory system and an intrinsic comedy, a constant parody of itself...<sup>10</sup>

What is worth emphasizing here is McRuer’s insistence that even though able-bodiedness is heralded as the normal or ideal way of being in the world, the ideal is intrinsically impossible to attain since all mortal bodies are always susceptible to illness, disease, and impairment. McRuer notes that the phenomenon of “passing,” wherein people with visible disabilities attempt to hide their impairments from public scrutiny, is emblematic of the pressures wrought by compulsory able-bodiedness. Whether it is by hiding dyslexia from your peers, undergoing surgery for cochlear implants even when you prefer to communicate through American Sign Language (ASL), or putting your hands in your pockets to hide the fact that you are missing fingers, ableism compels people with disabilities to consistently (but futilely) conform to unattainable able-bodied ideals.

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<sup>10</sup> Robert McRuer, *Crip Theory: Cultural Signs of Queerness and Disability* (New York: New York University Press, 2006), 10.



The relationship between ableism and disablism is complex: ableism creates a climate for disablism with its assumption that normal human beings are healthy, prime-of-life, fully functional, and whole subjects. In order for able-bodied status to remain the dominant norm, disablism perpetuates the idea that disability is a diminished state of being. Disability studies scholar Rosemarie Garland-Thomson carefully describes how disablism functions to preserve ableism:

...The meanings attributed to extraordinary [disabled] bodies reside not in inherent flaws, but in social relationships in which one group is legitimated by possessing valued physical characteristics and maintains its ascendancy and its self-identity by systematically imposing the role of cultural or corporeal inferiority on others.<sup>11</sup>

Garland-Thomson is useful here because she draws attention to the fact that that able-bodied and disabled subjects are socially constructed and maintained in relationship to one another. In other words, the construction and perpetuation of able-bodiedness as an elite status is contingent upon the structural devaluation of disability by contrast.

As this analysis will make clear, Locke actively participates in this process by positioning able-bodied citizens and people with disabilities in opposition to one another. In this regard, he frequently portrays disability as an all-or-nothing condition— we are either rational and self-sufficient, and hence capable of self-sovereignty, or we are completely irrational and dependent, absolutely unable to participate in political life. Moreover, a close textual reading reveals that he often relies on practices of disablism while constructing his arguments, invoking dehumanizing, universalizing images of disability to serve as the negative counterpoint to his theories about human understanding and political personhood. In this way, Locke ultimately justifies the creation of an ableist

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<sup>11</sup> Rosemarie Garland-Thomson, *Extraordinary Bodies: Figuring Physical Disability in American Culture and Literature* (New York: Columbia University Press, 1997), 7.

system of limited governmental intervention, one which ultimately cannot adequately procure or protect the rights of people with disabilities.

## II. *DISABLISM AND POLITICAL PERSONHOOD*

In *An Essay Concerning Human Understanding* (1690), the specter of disability plays a pivotal role in developing Locke's claims about human understanding and political personhood. The *Essay* (1690) is perhaps best known for containing Locke's "tabula rasa" theory of the mind. In contrast to Descartes' idea that people are born with innate ideas, Locke supposes that the human mind is a blank slate, awaiting the experience of sensation. "Let us suppose the Mind to be, as we say, white Paper, void of all Characters, without any *Ideas*," Locke writes. "How comes it to be furnished? To this I answer, in one word, From *Experience*..." (*EHU* II.1; 2). By experience, Locke means that knowledge is acquired through the senses. If we acquire knowledge through our senses, it is therefore of primary importance that we understand what our senses can and cannot perceive, and what our minds can and cannot do to assimilate those perceptions into our understanding.

In order to explain how the experience of sensation creates knowledge in our minds, Locke deploys a whole cast of disabled characters to signify the absence of sense, and hence knowledge. Consider his discussion of blindness, where he claims that while it may appear that certain ideas are innate, they are in fact lodged in human memories of experience. He uses the following example to make his case:

Suppose a Child has the use of his Eyes till he knows and distinguishes Colours; but then Cataracts shut the Windows, and he is forty or fifty years perfectly in the dark; and in that time perfectly loses all memory of the *Ideas* of colours, he once had... I ask whether any one can say this Man

had then any *Ideas* of colours in his mind, any more than one born Blind? And I think no body will say, that either of them had in his mind any *Idea* of colours at all (*EHU* I.4; 20).

According to Locke, a person who went blind at a young age, and cannot remember the experience of vision, has the same limited basis of knowledge as a person who was born blind. Interestingly, the figure of the blind man resurfaces later in the essay, where he adamantly suggests that a blind man can never understand color:

A studious blind Man, who had mightily beat his Head about physical Objects, and made use of the explication of his Books and Friends, to understand those names of Light, and Colours, which often came in his way; bragg'd one day, That he now understood what *Scarlet* signified. Upon which his Friend demanding, what *Scarlet* was? the blind man answered, It was like the Sound of a Trumpet (*EHU* III.4; 11).

In Locke's estimation, the blind man's description of the color scarlet as similar to the sound of a trumpet is absurd, since ideas are formed when external objects are perceived through the "proper inlets" (i.e., senses). The implication is that if people learn of the world *only* through their senses, the blind person will always lack some important knowledge. Thus the figure of the blind man operates in Locke's text as a figure for a lack of understanding.<sup>12</sup> And while we may acknowledge the point that the blind man

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<sup>12</sup> Especially in *A Letter Concerning Toleration* (1689), Locke uses blindness as a metaphor for ignorance. In arguing that the church can only gain genuine converts through persuasion, as opposed to violence or coercion, Locke writes, "Though if infidels were to be converted by force, if those that are either *blind* or obstinate were to be drawn off from their errors by armed soldiers, we know very well that it was much more easy for Him to do it with armies of heavenly legions than for any son of the Church, how potent soever, with all his dragoons. The toleration of those that differ from others in matters of religion is so agreeable to the Gospel of Jesus Christ, and to the genuine reason of mankind, that it seems monstrous for men to be so *blind* as not to perceive the necessity and advantage of it in so clear a light" (*LCT*, 25). Here, blindness refers to both infidels, who lack knowledge and faith in God, and also to government officials, who are ignorant of the virtues of religious toleration. Overall, when he talks about the dangers of having people "*blindly*...resign themselves up to the will of their governors," or forcing people into "*blindly* following" the magistrate's orders to conform to religious doctrine, he is using disability to signify ignorance and thoughtlessness (*LCT*, 27, 37).

may not understand color, Locke's implication that the blind suffer from a broader limitation of knowledge is highly dubious, as well as objectionable.

Locke's hypothetical blind man is not his only figure who signifies the absence of sense and hence knowledge. In Book II of the *Essay*, he develops his empiricist epistemology, elaborating on how human beings have the faculties necessary for accumulating knowledge through perception, retention, discernment, comparison, and abstraction. Starting with perception, he suggests that this basic capacity puts the boundaries between animals and "inferior ranks of creatures." In distinguishing between those creatures capable of perception from those who are not, he compares the figure of a severely disabled old man to oysters and clams (cockles), suggesting that without the capacity for perception, this hypothetical disabled figure is really no different from simple sea creatures:

Take one, in whom decrepid old Age has blotted out the Memory of his past Knowledge, and clearly wiped out the Ideas his Mind was formerly stored with; and has, by destroying his Sight, Hearing and Smell quite, and his Taste to a great degree, stopp'd up almost all the Passages new ones to enter; or, if there be some of the Inlets yet half open, the Impressions made are scarce perceived, or not at all retained. How far as such... is in his Knowledge, and intellectual Faculties, above the Condition of a Cockle, or an Oyster, I leave to be considered. And if a Man had past Sixty Years in such a State, as 'tis possible he might, as well as three Days, and any intellectual Perfections, between him, and the lowest degree of Animals (*EHU* II.9; 14).

By comparing a disabled old man with "the lowest degree of animals," Locke could imply that the capacity for perception (or lack thereof) is critical to the construction of human knowledge and understanding. In the process, he also dehumanizes people with disabilities.

When Locke moves to a discussion of the sophisticated capacity for abstraction, the capacity he presumes to be unique to human beings, the specters of idiocy and madness often function as the markers of legitimate reason. According to Locke, abstraction occurs when the mind “repeats, adds together, and unites its simple *Ideas* received from sensation or reflection” (*EHU* II.8; 8). The figure of the idiot, in particular, marks the boundary of competent abstraction and the ability to associate ideas.<sup>13</sup> Cast as completely devoid of reason and reflection, as the antithesis of the fully rational human, the idiot, according to Locke’s estimation, “cannot distinguish, compare, and abstract” and “would hardly be able to understand, and make use of Language, or judge, or reason to any tolerable degree” (*EHU* II.11; 11-12). Indeed, the figure of the idiot signifies the complete and permanent absence of thought, even in contrast to the aberrant thinking of the madman. “Hearin seems to lie the difference between Idiots and mad Men,” writes Locke. “Mad Men put wrong Ideas together, and so make wrong Propositions, but argue and reason right from them: But Idiots make very few or no Propositions, and reason scarce at all (*EHU* II.1; 13). The figure of the idiot is a glaring example of Locke’s disablism—the idiot is the permanently irrational counterpart to the fully rational, able-bodied self.

Locke’s method can be seen in other works as well. In *Some Thoughts Concerning Education* (1693), for example, he offers medical and educational advice to explain how to educate young (male) minds, develop healthy bodies and form virtuous characters. In this work, he portrays disabled people as completely incapable of

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<sup>13</sup> For a fuller discussion of Locke’s views on idiocy see C.F. Goodey “John Locke’s Idiots in the Natural History of the Mind,” *History of Psychiatry* 5 (1994): 215- 250. While Goodey does not specifically focus on practices of ableism/disablism, he also notes that Locke understands humanity in relation to idiocy. In his words “Locke’s pessimism about idiots is tied to his ethical optimism about everyone else...” (215).

improvement or development, and he juxtaposes this portrayal to the “typical” child in order to develop the thesis that human reason and physical strength must be developed through disciplined education and exercise. The following passage is particularly telling, since he directly positions physically and mentally disabled people in opposition to nondisabled ones:

A Sound Mind in a sound Body, is a short, but full Description of a Happy State in this World: He that has these Two, has little more to wish for; and he that wants either of them, will be but little the better for any thing else. *He, whose Mind directs not wisely, will never take the right Way; and he, whose Body is crazy and feeble, will never be able to advance in it* (I.5).

Here the disabled figure is the exception that defines the rule. While the normal human with a “sound mind” and a “sound body” has infinite potential, the disabled mind is permanently incapable of improvement, and the physically impaired body is perpetually feeble. Once again, disability is cast as an all-or-nothing condition. By depicting disability as an all-or-nothing condition, Locke ultimately forecloses alternative understanding of bodies, health, capabilities, and political agency.

Locke further deploys the figure of disability to reinforce his empiricist epistemology, albeit in a sometimes surprising way. In addition to signifying the complete lack of sense, many presumably disabled characters—idiots, changelings, naturals, and monsters—are trotted out to further disprove the existence of innate principles.<sup>14</sup> For Locke, these figures pose a challenge for species classifications because

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<sup>14</sup> In both “John Locke and His Successors: The Historical Contingency of Disability” and also “The Psychopolitics of Learning and Disability In Seventeenth Century Thought,” C.F. Goodey elaborates on Locke’s use of the terms “idiot,” “changeling,” and “natural,” all of which connote mental and intellectual disability. In addition, Christopher Hughes Conn agrees that, “By ‘changeling’ Locke seems to mean a mentally retarded or severely deformed human being.” See C.F. Goodey, *A History of Intelligence and “Intellectual Disability”: The Shaping of Psychology in Early Modern Europe* (Surrey, England: Ashgate Publishing, 2011), 313-346; “The Psychopolitics of Learning and Disability In Seventeenth Century Thought” in *From Idiocy to Mental Deficiency: Historical Perspectives on People with Learning Disabilities*, eds. David Wright and Anne Digby (London: Routledge, 1996), 93-117. See also Christopher

they seem to resemble “something between Man and Beast” (*EHU* IV.4; 14). Addressing the difficulties of deciding who counts as a human being, he writes that on the one hand “there are Creatures in the World, that have shapes like ours, but are hairy, and want Language, and Reason,” and on the other hand “there are Naturals amongst us, that have perfectly our shape, but want Reason, and some of them Language too” (*EHU* III.11; 22). He also uses the example of a physically deformed infant to emphasize the difficulty in distinguishing humans from non-humans:

‘Tis plain, if we examine, there is *no* such thing *made by Nature*, and established by Her amongst Men. The real Essence of that, or any other sort of Substances, ‘tis evident we know not; and therefore are so underdetermined in our nominal Essences, which we make our selves, that if several Men were to be asked, concerning some oddly-shaped *Foetus*, as soon as born, whether it were a Man, or no?, ‘tis passed doubt, one should meet with different Answers. Which could not happen, if the nominal Essences, whereby we limit and distinguish the *Species* of Substances, were not made by Man, without some liberty; but were exactly copied from precise Boundaries set by Nature, whereby it distinguish’d all Substances into certain *Species* (*EHU* III.11; 27).

Thus Locke uses the confusion regarding the questions of whether or not a physically deformed infant is a human (*EHU* III.11; 27), whether a changeling has a soul (*EHU* IV.4; 14), or whether a mentally impaired child born to rational parents is in fact a person (*EHU* IV.4; 16) as evidence that species identifications are determined through classificatory decisions, not because members of a species share intrinsic and easily identifiable properties. For Locke, considerable disagreement over the species membership of changelings and monsters speaks to the inexistence of objectively existing species.

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Hughes Conn, *Locke: On Essence and Identity* (Dordrecht, The Netherlands; Kluwer Academic Publishers, 2003), 44.

This is not to say that Locke considers classification schemas to be unimportant. On the contrary, he thinks that we need classification so that we can use language to communicate our ideas to one another (*EHU* III.11; 2). What is at stake for him is the question of *how* we should develop the criteria by which we sort species into distinct categories. In Locke's view, a species is distinctive only because people make phenomenal observations and logical classificatory decisions to determine how members of the same species are qualitatively similar, at least in certain relevant aspects such as color, size, shape, and function. This view counters the idea that there exist transcendent, objective criteria to discern species classifications. Put simply, Locke contends that we sort species as we find it useful for scientific analysis, rather than by searching for objective criteria rooted in nature.

Given his view that distinctions between species must be determined through scientific decisions, Locke draws from his own observations to suggest that the capacity to reason is the hallmark of humanity. He defines a person as “[a] thinking intelligent Being, that has reason and reflection, and can consider it self as it self, the same thinking thing, in different times and places...” (*EHU* II.27; 9). Elsewhere, he describes man as “a corporeal rational creature,” suggesting that we cannot identify members of the human species primarily by their shape, but by whether or not the creature in question can exercise reason:

We mean nothing by Man, but a corporeal rational creature: What the real Essence or other Qualities of that Creature are in this Case, is no way considered. And therefore, whether a Child or a Changeling be a *Man* in a physical Sense, May amongst the naturalists be as disputable as it will, it concerns not at all the *moral Man*, as I may call him, which is this immovable unchangeable *Idea, a corporeal rational being*. For were there a Monkey, or any other Creature to be found, that had the use of Reason, to such a degree, as to be able to understand general Signs, and to deduce



Consequences about general *Ideas*, he would no doubt be subject to Law, and in that sense, be a *Man*, how much soever he differ'd in Shape from others of that Name (*EHU* III.11; 16).

In urging his reader to abandon the idea that shape is the most salient characteristic when determining species, he questions the humanity of mentally disabled people (changelings), and even entertains the idea that a monkey capable of reason could be elevated to the status of a human being who is a subject of the law. Those who cannot reason are relegated to a less-than-human status, in a class with criminals, savages, and children, all of whom in different ways demonstrate impaired or undeveloped capacities for exercising reason.

However, Locke occasionally acknowledges how he is exaggerating the capacities of political persons. There are gradations of rationality that considerably complicate the Lockean ideal of personhood. As Locke himself acknowledges elsewhere, those deemed able-bodied may, and often do, act irrationally. In the *Second Treatise*, he points out that “self-love will make men partial to themselves and their friends... ill nature, passion and revenge will carry them too far” (*2T*.2; 13). In a similar passage, Locke suggests that people are often more “biased by their interest” and “ignorant,” than purely rational agents of natural law:

For though the law of nature be plain and intelligible to all rational creatures; yet men being biassed by their interest, as well as ignorant for want of study of it, are not apt to allow of it as a law binding to them in the application of it to their particular cases (*2T*.9; 124).

After all, if human beings were perfectly rational and natural law was fully observed by all, there would be no need for government; it would be superfluous and unnecessary if people could simply live in harmony according to the dictates of reason.

Likewise, Locke overemphasizes disabled people's state of dependency to suggest that citizens, by contrast, should be independent self-sovereigns. Locke's views on independence and self sufficiency are perhaps most clearly articulated in his discussion of paternal power and childhood. In his view, a child is not only disqualified from citizenship because he has not yet developed the capacity to reason necessary to guide his actions within the bounds of the law, but also because he lacks "the ability to govern himself" (2T.6; 61). Because a child is unable to "provide for his own support and preservation" and is dependent upon his parents for survival, it is only appropriate that the child should therefore be subjected to his parents' paternal power until he has reached adulthood and becomes capable of exercising political power (2T.6; 56). Yet Locke does not adequately consider the fact that all people, even adults, experience dependency in different times and places throughout their lives. After all, if human beings were truly independent and self-sufficient there would be no need for social cooperation, and hence no need to form a social contract and commonwealth. Ultimately, Locke's references to disability serve to maintain the illusion of nondisabled rationality and self-sufficiency, since perfect rationality and independence are in fact impossible for any real human to embody.

### III. *DISABILITY, NATURAL RIGHTS, AND PROPERTY*

Yet, Locke does not simply use disability as an inverted image to define political personhood. He also explicitly excludes those with disabilities from being considered bearers of natural rights to freedom and property, and this systemic exclusion results in the design of an ableist system of government. To take a step back, the starting point of

Locke's *Second Treatise of Government* (1690) is his theory of the state of nature, which he initially characterizes as "a state of perfect freedom" and "a state also of equality" (2T.II; 4). In this hypothetical, pre-political state, we are free in the sense that each person is naturally entitled to rule over himself, and equal in the sense that no one is naturally entitled to rule over others. But while at first glance it may seem that everyone is naturally free in this state of nature, when we account for the experiences of people with mental and physical disabilities we come to understand that they are not bearers of the natural rights to liberty and property. According to Locke, "*freedom of nature* is, to be under no other restraint but the law of nature" (2T.IV; 22). Yet to follow the law of nature, one must exhibit the capacity to reason. "The *state of nature* has a law of nature to govern it, which obliges every one," writes Locke. "And reason, which is that law, teaches all mankind, who will but consult it, that being all *equal and independent*, no one ought to harm another in his life, health, liberty, or possessions" (2T.II; 6). Under Locke's own definition of natural freedom, therefore, it follows that mentally impaired individuals in the state of nature are unfree, or at least less free than others, since they cannot live in accordance with the law of nature.

To qualify as a bearer of the natural right to liberty one must also have the ability to *act* based on reasoned judgments. As Locke makes clear in the *Essay*, "The *Idea* of *Liberty*, is the *Idea* of a Power in any Agent to do our forbear any particular Action, according to the determination or thought of the mind..." (EHU II.21; 8). This necessary capacity for action surely applies to some rational people whose physical impairments prevent them from translating reasoned preferences into physical actions, at least in certain instances. In the *Essay*, he specifically uses the examples of people with physical

impairments— cerebral palsy and paralysis— to make his case. If, on the one hand, a person with “Palsie or the Stocks hinder his Legs from obeying the determination of his Mind,” he writes, “there is a want of *Freedom*.” Hence the person with cerebral palsy, who desires to be still but experiences involuntary muscle movements, is not free. On the other hand, “the sitting still...of a Paralytic” who genuinely wants to remain still does not signify a want to freedom, because he is able to translate the desire into action (*EHU* II.21; 11). It is only when the paralytic desires to move, but is physically unable to do so, and that he is naturally unfree. Locke further explains this distinction:

*“Man is not at liberty to will, or not to will, because he cannot forbear willing: Liberty consisting in a power to act, or to forbear acting, and in that only. For man who sits still, is said yet to be at liberty, because he can walk if he wills it. A Man that walks is at liberty also, not because he walks or moves; but because he can stand still if he wills it. But if a Man sitting still has not power to remove himself, he is not at liberty...”* (*EHU* II.21; 24).

Thus in arguing that freedom consists “in our being able to act, or not to act, according as we shall chuse, or *will*,” Locke also situates at least some people with physical impairments outside of the realm of natural freedom (*EHU* II.21; 27).

In addition, Locke’s account of property rights has dire consequences for those whose capacities for industry are deemed inferior or absent. In “On Property,” Locke initially begins the chapter by claiming that God bestowed the earth to all of mankind, but he quickly qualifies this statement, claiming that “he (God) gave it to the use of the industrious and rational” for the purposes for private accumulation (*2T.5*; 33). Yet those with many physical impairments would not qualify as industrial, as those with mental impairments would not be considered rational bearers of property. With respect to

physical industriousness, Locke explains the shift from common ownership to private accumulation in the following discussion of physical labor:

Though the earth, and all inferior creatures, be common to all men, yet every man has a *property* in his own *person*: this no body has any right to but himself. The *labour* of his body, and the *work* of his hands, we may say, are properly his. Whatsoever then he removes out of the state of nature hath provided, and left it in, he hath mixed his *labour* with, and joined to it is something that is his own, and thereby makes it his *property*. It being by him removed from the common state of nature hath placed it in, it hath by this labour something annexed to it, that excludes the common right of other men: for this *labour* being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to... (2T.5; 27).

Locke's logic is straightforward: labor is part of one's person; an individual is the exclusive proprietor of the act of labor; when labor is mixed with resources, the person becomes proprietor of those resources, and thus has an exclusive natural right to this private property. Yet it is entirely possible that a person with a physical impairment may not be able to employ the "labour of his body, and work of his hands" in order to accumulate private property, and would therefore have no legitimate claim to natural property rights. Thus Locke's assumption that individuals in the state of nature can control their bodies, using their labor power in order to create private property, is deeply problematic for those with physical impairments who cannot engage in physical labor.

With respect to rationality and property, Locke assumes that only rational people will have the capacities and desires to accumulate private property. This controversial claim was thoroughly critiqued by C.B. MacPherson in *The Political Theory of Possessive Individualism* (1962). Macpherson is critical of the "possessive individualism" put forward in Locke's theory of property, suggesting that the argument is only coherent if one contributes differential rationality between capitalists and wage-laborers. While

MacPherson must make inferences from Locke's logic to argue that he attributed differential rationality to capitalists and wage-earners, the previous reading of the *Essay* demonstrated that Locke rather explicitly considered those with mental impairments to be permanently and completely irrational. Hence those with mental impairments are also not Lockean bearers of property rights.

Not only are people with physical and cognitive disabilities unable to be bearers of the natural rights to liberty and property, but also they are not considered naturally equal. Locke qualifies the condition of natural equality, suggesting that within the state of nature "creatures of the same species and rank, promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal amongst another without subordination or subjection..." (2T.II; 4). As demonstrated in the earlier reading of the *Essay*, Locke portrays people with disabilities as belonging to a subhuman class, so we can conclude that Locke would not oppose hierarchal relationships between those with the "same faculties" and those without. In a similar passage, Locke reiterates that natural equality is conditional: "Being furnished with like faculties, sharing all in one community of nature, there cannot be supposed any such *subordination* among us, that may authorize us to destroy one another, as if we were made for one another's uses, as the inferior ranks of creatures are for our's" (2T.II; 6). Here Locke explicitly acknowledges the presence of natural inequalities between those "furnished with like faculties" and the so-called "inferior ranks of creatures," which, notably, is the same phrase that he used to describe the hypothetical disabled old man in *The Essay*. In sum, Locke's state of nature is a qualified state, one in which the conditions of "perfect freedom and equality" actually do not apply to all.

#### IV. ABLEISM AND (SELF) GOVERNMENT

So how do those with disabilities fare within Locke's political society? Quite simply, they are excluded because they do not meet the prerequisites necessary for entering into the social contract. In his explanation of why people cannot live forever in the state of nature, Locke appeals to the language of rational self-interest, suggesting that reasonable people willingly give up their natural liberties in order to escape "the inconveniences of the state of nature, which necessarily follow from every man's being judge in his own case" (2*T*.7; 90). Although one will indeed have to forfeit some natural liberties (namely, the freedom to judge one's own case and execute punishment as one sees fit), by entering into society one will receive an established law, an indifferent judge, and an impartial executor of punishment to "decide all controversies" and conflicts over private property (2*T*.9; 124-126). Only a rational person will realize that political rights are preferable to unenforceable natural rights, and this realization will motivate one to seek protection through enforceable contracts. The capacity for reason is necessary for the dissolution of contracts as well, and Locke desires a well-informed citizenry with the capacity for informed self-government and the concomitant ability to resist tyranny should the costs of society start to outweigh the benefits (2*T*.19). Those with diminished mental faculties cannot fulfill these functions, in his estimation, and so it can be inferred that cognitively disabled individuals are largely excluded from the rights and duties bestowed upon political persons.

The final step in Locke's thinking is that if legitimate governments are constituted through the consent of the people to protect their natural rights, contracting individuals

must necessarily initially possess natural rights in order to transfer them to political society. In Locke's social contract, the crucial human development is from "natural" man to "political" man; from resident of the state of nature to resident of civil society; from self-executor of natural rights to a limited government's protectorate of natural rights. He describes this social contract as follows:

Men being, as has been said, by nature, all free, equal, and independent, no one can be out of his estate, and subjected to the political power of another, without his own consent. The only way whereby anyone divests himself of his natural liberty, and puts on the *bonds of civil society*, is by agreeing with other men to join and unite into a community for their comfortable, safe, and peaceable living one amongst another, in the secure enjoyment of their properties, and a greater security against any, that are not of it (2T.7; 95).

People with disabilities are essentially excluded from Locke's social contract because one who is naturally unfree cannot "divest himself of his natural liberty" and conditionally transfer his natural rights to the political society. In essence, there is nothing to divest. By the same token, they are excluded from Locke's social contract because they would presumably get nothing out of it. Without natural liberty to protect, what purpose would the government serve for those with disabilities?

This exclusion from the social contract is not a problem for Locke, however, since all those outside of the contract are simply left as they were in the state of nature (2T.7; 95). Put differently, they are left in the private, nonpolitical realm. Central to the *Second Treatise* is the distinction between paternal (private) and political power. As Locke puts it, "the power of *magistrate* over a subject may be distinguished from that of a *father* over his children, a *master* over his servant, a *husband* over his wife, and a *lord* over his slave" (2T.1; 2). This public/private distinction enables him to refute Filmer's view that all social relations can be explained in terms of the model of the household, in which the



father is the absolute master. Just as Adam was made master of all his domain by God, Filmer contends that the King of England should be master of his domain as the figurative father of the body politic. Locke, by contrast, envisions political relations as mutual contractual relationships, although he grants that paternal, hierarchical power can be exercised within familial relationships in the private realm.

In keeping with this distinction between public and private realms, Locke is explicit about the place of those with disabilities in the private realm. Mentally disabled individuals are not capable of political liberty, since rationality and political liberty are intimately connected in Locke's thought. The link between reason and political freedom is best understood by examining the relationship that he posits between freedom and the law. "The freedom then of man, and liberty of acting according to his own will," he writes, "is grounded on his having reason, which is able to instruct him in that law he is to govern himself by, and make him know how far he is left to the freedom of his own will" (2T.6; 63). Put simply, political freedom, to a certain extent, involves living under laws of one's own design. Thus, Locke needs all political persons to be able to govern themselves according to the dictates of their reason. He is explicit about this point, as evidenced in the following oft-quoted passage:

But if, through defects that may happen out of the ordinary course of nature, any one comes not to such a degree of reason, wherein he might be supposed capable of knowing the law, and so living within the rules of it, he is *never capable of being a free man*, he is never let loose to the disposal of his own will (because he knows no bounds to it, has not understanding, its proper guide) but is continued under the tuition and government of others, all the time his own understanding is incapable of that charge. And so *lunatics* and *ideots* are never set free from the government of their parents; *children, who are not as yet come unto those years whereat they may have; and innocents which are excluded by natural defect from ever having; thirdly, madmen, which for the present cannot possibly have the use of right reason to guide themselves, have for*

*their guide, the reason that guidance of their men which are tutors over them, to seek and procure their good for them... (2T.6; 60).*

As this passage makes clear, anyone incapable of exercising reason and acting on reasoned preferences is a perpetually non-political person, one who is best ruled through paternal power under the tuition and government of family. While paternal power cannot be exercised over political persons because it would undermine their freedom, it is the most appropriate form of power to exercise over “lunatics,” “ideots,” “innocents,” and “madmen” within the private realm.

The disabled are also excluded from the public realm because they are not considered to be a subject of justice, in the sense that they are unable to create laws or receive protection under the law. In *The Second Treatise*, Locke alludes to a “crippled” person in a somewhat strange discussion about whether or not conquest is legitimate. Thus he argues that an unjust conqueror never has the right to rule the conquered, unless those who are conquered have formerly relinquished their rights by waging an unjust war. For those who did not wage such an unjust war, however, but were instead illegitimately attacked by pirates and thieves, Locke asks,

What is my remedy against a robber, that so broke into my house? *Appeal* to the law for justice. But perhaps justice is denied, or I am crippled and cannot stir, robbed and have not the means to do it. If God has taken away all means of seeking remedy, there is nothing left but patience (2T.16; 176).

Here it appears that Locke considers crippled people to lack political agency. Unable to “seek the relief of the law,” they must either rely on their sons to make appeals later on their behalf, or pray to heaven for restitution (2T.16; 176). Locke’s estimation of disabled peoples’ capabilities erases their potential for agency, which in turn removes them from the scope of justice.

Where does this leave people with disabilities? As non-political beings, it can be presumed that they must rely on private charity instead of justice. “As justice gives every man a title to the product of his honest industry, and the fair acquisitions of his ancestors descended to him,” writes Locke, “so charity gives every man a title to so much out of another’s plenty as will keep him from extreme want, where he has no means to subsist otherwise” (1T.IV; 42). Despite Locke’s references to the rights and duties of charity, which we can assume will include minimal moral obligations toward the disabled who are unable to work, people with disabilities are nevertheless excluded from his theory of politics. While unemployed people with disabilities may possibly benefit from another’s labor and benevolence, they have no rights or legal guarantees— much like slaves, who are perpetually subjected to “absolute, arbitrary power” (2T.4; 22). Locke’s theory of liberty was motivated by his concerns about the abuse people might be subjected to if political power was in the hands of an absolute an arbitrary authority, yet he leaves the disabled figure vulnerable to cruelty in the private sphere, with no recourse to justice.

Ultimately, this reading of the *Second Treatise* reveals that Locke’s ideal political society is created by able-bodied citizens for able-bodied citizens. When freedom is considered to be natural, it follows that the absence of interference by external agents is sufficient for its realization. By this logic, if the state keeps its hands off, an individual’s natural rights are taken to have been secured—the state has no further affirmative task. Indeed, Locke’s ideal state only supplies the minimal rulemaking, adjudicative, and enforcement services that individuals require for the protection of their natural rights. It is as a referee of sorts, one which minimally fulfills the negative duty of preserving citizens’ pre-political rights. Thus Locke declares that “the great and *chief end*... of men’s

uniting into common-wealths, and putting themselves under government, is the preservation of their property” (2T.9; 124). His ideal government does not have the duty to actively ensure that members of the state have private property that can be preserved. Rather, its primary function is to protect natural property rights and preexisting distributions of private property that developed in the state of nature. In this way, the government is run by natural property owners (who are presumably able-bodied), for property owners, just as it is run by naturally free men (who are presumably able-bodied), for the preservation of their freedom.

#### *V. RETHINKING FREEDOM AND RIGHTS FROM A DISABILITY PERSPECTIVE*

By now it should be clear that Locke’s idea that the government should passively protect natural rights is problematic from a disability perspective. For example, let us assume that a person with paralysis is unable to climb stairs. In Locke’s view, these limitations on freedom are not a political problem since natural or internal obstacles to freedom are beyond the scope of justice. This line of thinking is objectionable on two fronts: first, Locke undertheorizes the relationship between the biological body and the social environment, falsely assuming that bodies are naturally either able or disabled; and second, his idea that rights are natural, or pre-ordained by virtue of our humanity, is a fiction that primarily benefits able-bodied citizens.

With respect to the first objection, disability philosopher Susan Wendell’s work is attentive to the particular cultural contexts that human bodies inhabit. According to Wendell, each internal capability of any human being always assumes the presence of appropriate external conditions for its realization. Conversely, these external conditions

will necessarily affect the particular way in which any given internal capability will be expressed or realized. A person's ability to labor, for example, should not be understood as a "given" property of that person since the "natural" capacity to labor depends upon how one can interact with one's social environment. In this way, we come to understand that "a great deal of disability is created by building and organizing environments, objects, and activities for a too-narrow range of people."<sup>15</sup> Wendell subsequently understands the securing of a right as an affirmative task, since as a political society we can make decisions that will provide the external conditions necessary to allow diverse bodies to flourish. Returning to the hypothetical situation of the person who physically is unable to climb stairs, Wendell's approach is better equipped to allow those with disabilities to exercise freedom, since the state would be obliged to put ramps on public buildings to accommodate wheelchairs.

Thus, Wendell highlights how any human power, ability, or capacity is relationally realized. When we understand bodies this way, it becomes clear that the capabilities of those whom we consider able-bodied are also dependent upon innumerable external conditions, or social prostheses, to perform work at the highest possible functioning. In her words,

... Most industrialized societies give non-disabled people (in different degrees and kinds, depending on class, race, gender, and other factors) a lot of help in the form of education, training, social support, public communication and transportation facilities, public recreation, and other services. The help that non-disabled people receive tends to be taken for granted and not considered help but entitlement, because it is offered to citizens who fit the social paradigms, who by definition are not considered dependent on social help. It is only when people need a different kind of amount of help than that given to [able-bodied] citizens that it is

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<sup>15</sup> Susan Wendell, *The Rejected Body: Feminist Philosophical Reflections on Disability* (New York: Routledge, 1996), 47.

considered help at all, and they [disabled people] are considered socially dependent.<sup>16</sup>

This line of thinking reveals that it is not just the impaired body that depends upon the design of its social surroundings, since all bodies require certain external conditions in order to flourish. The problem, from Wendell's perspective, is that non-disabled people "take naïve pride in their own imagined 'independence'," meaning that they fail to recognize the ways in which they also rely on other people, architectural and structural designs, and governmental programs that allow them to freely go about their daily lives in a seemingly independent way.<sup>17</sup> Accordingly, it can be argued that the ideal of pure independence is nothing more than a fiction that stigmatizes those who may need social assistance and governmental restructuring in order to flourish.

As to the second objection, in order for people with disabilities to exercise freedom, it may be necessary to move away from Locke's theory of natural rights and think through the way in which the state is needed to manufacture and protect political rights. In *After Virtue* (1981), Alasdair MacIntyre offers a compelling critique of the liberal concept of natural rights. From MacIntyre's point of view, rights are not natural, but are instead artifacts of particular social institutions and legal arrangements. In his view, there are no better reasons to accept the existence of natural rights than to accept that there are "witches and unicorns." Natural or human rights, which he describes as "rights which are alleged to belong to human beings as such and which are cited as a reason for holding that people ought not to be interfered with in their pursuit of life,

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<sup>16</sup> Wendell, *The Rejected Body*, 40-41.

<sup>17</sup> Wendell, *The Rejected Body*, 75.

liberty and happiness,” are “fictions.”<sup>18</sup> What this means is that rights are in no way universal features of the human condition, but are instead socially constituted through a collective commitment to establish a set of rules that will change individuals’ relations with one another. As he puts it,

Those forms of human behavior which presuppose notions of some ground to entitlement, such as the notion of a right, always have a highly specific and socially local character, and... existence of particular types of social institution or practice is a necessary condition for the notion of a claim to the possession of a right being an intelligible type of human performance. (As a matter of historical fact such types of social institutions or practice have not existed universally in human societies.) Lacking any such social reform, the making of a claim to a right would be like presenting a check for payment in a social order that lacked the institution of money.<sup>19</sup>

Put differently, one can be said to have a right only when one can effectively “cash it out,” that is, when there exists socially established mechanisms for achieving, recognizing, and indicating rights claims. Thus MacIntyre apprehends all rights as positive products of a political society’s collective will, and never as natural, pre-given entitlements.

Applying this critique to disability politics, disability scholar Michael Bérubé offers a similar critique of natural rights, arguing that his son Jamie, who was born with Down syndrome, only has rights insofar as the political community that he lives in socially manufactures and recognizes specific rights. While the idea that we are naturally endowed by God or nature with inalienable entitlements is a nice thought, Bérubé suggests that appealing to his son’s natural rights would not go very far in a political society that is not collectively committed to social justice. In his words,

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<sup>18</sup> Alasdair MacIntyre, *After Virtue: A Study in Moral Theory, Second Edition* (Indianapolis: University of Notre Dame Press, 1984), 69-70.

<sup>19</sup> MacIntyre, *After Virtue*, 67.

Of course, many of us would prefer to believe that our children have intrinsic human rights and human dignity no matter what; irrespective of any form of human social organization; regardless of whether they were born in twentieth-century Illinois or second-century Rome or seventh-century central Asia. But this is just a parent's— or a philosophical foundationalist's— wishful thinking. For what would it mean for Jamie to “possess” rights that no one on earth recognized? A fat lot of good it would do him. My argument may sound either monstrous or all too obvious: if, in fact, no one on earth recognized Jamie's human dignity, then there would in fact be no human perspective from which he would be understood to possess “intrinsic” human dignity. And then he wouldn't have it, and so much the worse for the human race.<sup>20</sup>

Again, the point here is not that rights are unimportant. The point is that rights are not naturally endowed entities which only require state nonintervention for realization. In this way, we come to see that the state has a positive obligation to create and actively protect the rights of all citizens, including those with physical and mental disabilities. As the case of disability makes clear, a Lockean state, characterized by a commitment to limited governmental intervention, cannot procure the conditions necessary for political freedom to be realized.

## VI. *CONCLUSION*

The “blind,” the “idiot,” the “madman,” the “paralytic”— the entire cast of disabled characters whom Locke enlists to define the liberal individual by opposition— is, above all else, a signifier of deficiency. By repeatedly deploying sweeping, monolithic portrayals of disability to bolster his arguments about human understanding and political personhood, Locke dehumanizes people with disabilities, ignores their heterogeneity, and erases their political agency. Lacking sense, and hence knowledge, the disabled figure

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<sup>20</sup> Michael Bérubé, “Citizenship and Disability,” *Dissent* 50 (2003): 55.



becomes an icon of permanent and totalizing irrationality and feebleness, a creature who is not deserving of political membership.

Moreover, because Locke imagines disabled individuals as people who are unable to direct their own lives, be productive, and establish political relationships with others, he justifies their status as non-political beings. This exclusion reveals the particularity of the supposedly “universal” body of the social contract. Because the conditions of natural liberty and equality in the state of nature were never meant to apply to those with mental and physical disabilities, Locke’s ideal political society is exclusively designed without their particular experiences and needs in mind. In his discussion of the particularity of the supposedly “universal” body of classical liberalism, Charles Mills (1997) writes,

In the disincarnate political theory of the orthodox social contract, the body vanishes, becomes theoretically unimportant, just as the physical space inhabited by that body is ostensibly theoretically unimportant. But this disappearing act is just as much an illusion in the former as in the latter case. The reality is that one can pretend the body does not matter only because the particular body (the white male body) is being presupposed as the somatic norm. In a political dialogue between the owners of such bodies, the details of their flesh do not matter since they are judged to be equally rational, equally capable of perceiving natural law or their own self-interest... [Yet] there are bodies impolitic whose owners are judged incapable of forming or fully entering into a body politic.<sup>21</sup>

Keeping with Mills’s claim, able-bodies are “being presupposed as the somatic norm” in Locke’s social contract theory, while disabled bodies are marked as “bodies impolitic.” Because only able-bodied citizens have the exclusive natural right to inhabit Locke’s political space, his ideal government is exclusively designed by able-bodied citizens for able-bodied citizens.

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<sup>21</sup> Charles Mills, *The Racial Contract* (Ithaca: Cornell University Press, 1997), 53.

Furthermore, this analysis suggests that even Locke's ideal able-bodied person only exists in a very qualified and particular sense, since the ideals of perfect rationality and independence are virtually impossible for anyone to embody. As Wendell's discussion of the relationship between the biological body and the social environment suggests, most liberal theorists, including Locke, fail to acknowledge that even those deemed rational and independent are, in fact, the product of a great deal of care and active social and governmental support. Therefore, it can be concluded that Locke's theory of limited governmental intervention is inadequate for all, and that all may stand to benefit from a more capacious understanding of rights, as well as a state which fulfills its obligation to procure and protect all its citizens' rights to liberty.

## CHAPTER 3

### DISABILITY, DISTRIBUTIVE JUSTICE, AND FREEDOM

Like most key terms in political theory, the meaning of concepts like “justice,” “equality,” and “freedom” are highly contentious and open to revision. Indeed, one of the most important contributions of contemporary critical theory is the rethinking of such core concepts. The motivation for this rethinking is often inspired by the way in which traditional concepts, like justice, have failed members of historically marginalized groups, including women, racial minorities, working class people, and others. Yet most mainstream political theorists have nonetheless said relatively little about how the experiences of physically and cognitively impaired people might challenge us to rethink these meanings. For example, many theorists concerned with principles of distributive justice— how political communities should go about allocating the benefits and burdens of society— have been guilty of avoiding difficult questions about what is owed, if anything, to disabled persons.<sup>1</sup> Although inexcusable, the fact that they have rarely

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<sup>1</sup> Not only have the experiences of people with disabilities been largely overlooked, but impaired individuals have also explicitly been situated outside the scope of justice. For instance, philosopher Jeff McMahan boldly argues that “the cognitively impaired are not owed duties of justice.” He continues to claim that “Not only do they not have special priority as a matter of justice, but their claims on us [able-bodied citizens?] seem even weaker than those of most other human beings.” Jeff McMahan, “Cognitive Disability, Misfortune, and Justice,” *Philosophy and Public Affairs* 25 (1996): 31. In addition, bioethicist Peter Singer has accepted the conclusion that disabled lives are in general less worth saving than nondisabled lives. In a discussion of the just allocation of medical treatment, he proposes that a life-saving organ transplant should be given to an able-bodied person over a paraplegic person, who would have the same post-transplant life expectancy, in order to maximize quality-adjusted life years. John McKie, Jeff Richardson, Peter Singer, and Helga Kuhse, *The Allocation of Healthcare Resources: An Ethical Evaluation of the ‘QALY’ Approach* (Dartmouth, 1998), 99-116.

addressed disability is understandable, since disability is often represented as something that should be transcended and overcome instead of accommodated. In addition, limitations on the ability of disabled people to economically contribute to the paid workforce and tax pool, in combination with their occasionally larger than typical needs for the basic resources necessary to live dignified lives, have posed unique challenges to conventional theories of distributive justice. In short, disability complicates matters.

That said, many contemporary political theorists and philosophers— including Anita Silvers (1995), Elizabeth Anderson (1999), Eva Feder Kittay (1999), Amartya Sen (1999), Martha Nussbaum (2006), and Mark Stein (2006), among others— are increasingly dissatisfied with this pattern of avoidance, and their concern with disability has posed serious challenges to conventional theories of distributive justice.<sup>2</sup> In particular, John Rawls’s theory of justice as fairness has been seriously scrutinized for disregarding people with disabilities. Critiquing Rawls, Nussbaum eloquently discusses why ignoring impairment is problematic when theorizing about justice:

[Rawls’s] postponement is not innocent, clearly. The parties are being asked to imagine themselves as if they represent citizens who really are “fully cooperating . . . over a complete life,” and thus as if citizens have no needs for care in times of extreme dependency. This fiction obliterates much that characterizes human life, and obliterates, as well, the continuity between the so-called normal and people with lifelong impairments... More generally, care for children, elderly people, and people with mental and physical disabilities is a major part of the work that needs to be done in any society, and in most societies it is a source of great injustice. *Any*

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<sup>2</sup> Anita Silvers, “Reconciling Justice to Equality: Caring (f)or Justice for People with Disabilities,” *Hypatia* 10 (1995): 30-55; Elizabeth Anderson, “What is the Point of Equality?,” *Ethics* 109 (1999): 287-337; Eva Feder Kittay, *Love’s Labor: Essays on Women, Equality, and Dependency* (New York: Routledge, 1999); Amartya Sen, *Development as Freedom* (Oxford: Oxford University Press, 1999); Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge: Harvard University Press, 2006); Mark Stein, *Distributive Justice and Disability: Utilitarianism against Egalitarianism* (New Haven: Yale University Press, 2006).

*theory of justice needs to think about the problem from the beginning, in the design of the basic institutional structure, and particularly in its theory of the primary goods (FJ, 127, emphasis added).*

According to Nussbaum, avoiding a discussion of disability is unacceptable because dependency and vulnerability are pervasive in human life. Disability is not a special case; on the contrary, all people are on a continuum of disability, and at different phases of the lifecycle we will all be providers and recipients of disability-related care. Given the pervasive nature of disability and impairment, Rawls's avoidance of disability is inexcusable.

In response, many political philosophers have started to consider the claims to justice of persons with mental and physical impairments. Recently, critics of Rawls's social contract theory have advanced alternative formulations, arguing that their models of justice are more responsive to the disabled and to the wider political community. Among these are Eva Kittay and Martha Nussbaum, who have provided alternatives in the form of "justice as caring" and the "capabilities approach," respectively. Although these alternatives differ in important ways, they are united by the foundational assumption that disability is central, not peripheral, to human and political life. Hence, they contend that any theory of justice that fails to address matters pertaining to disability and impairment is foundationally inadequate.

This chapter adjudicates between these competing conceptions of justice from a disability perspective. To begin, it examines Rawls's writings on disability, noting small shifts in his arguments as he refined his thinking from *A Theory of Justice* (1971) to *Political Liberalism* (1993) to *Justice as Fairness* (2001). Next, the chapter reviews Kittay and Nussbaum's critiques of Rawls, particularly concerning the inadequacies of

his treatment of the circumstances of justice, the original position, and the purpose of social cooperation. After determining that Rawls's theory cannot sufficiently address the needs and interests of individuals with impairments, it examines alternative theories of justice—specifically, Kittay's formulation of justice as caring and Nussbaum's capabilities approach—in order to assess the merits and shortcomings of each. It concludes that a revised combination of the care and capabilities approach would be the most responsive to the situation of people with disabilities, including those with severe impairments.

### I. RAWLS ON DISABILITY

Rawls touches on the issue of disability in scattered passages throughout his works. Yet when he addresses the question “to whom is justice owed, and why?,” his answer is not always straightforward, and there is considerable disagreement about whether or not he ever intended to apply the principles of justice as fairness to those with mental and physical impairments. In fact, in *A Theory of Justice* (1971), *Political Liberalism* (1993), and *Justice as Fairness* (2001), Rawls consistently sidelines matters of disability by treating severe mental and physical impairments as special cases with little bearing on the legitimacy of his theory as a whole. However, there are strains in his thinking that reveal more uncertainty in his thinking on the matter.

In his early writings, Rawls altogether bypasses any meaningful discussion of disability. In *A Theory of Justice*, he side-steps the issue by assuming a model of the social world in which all normal persons with the two moral capacities—the capacity for a sense of justice, and the capacity for a conception of the good—can take part in social

cooperation over the course of a complete life. He also specifically assumes that the individuals in his model “are roughly similar in physical and mental powers” (*TJ*, 109-110). The justification for this assumption is simple: for Rawls, it is important to first get the central cases of justice right before dealing with any “special cases” which may be distracting. In the revised edition of *A Theory of Justice* he explains his motivation for putting disability on the backburner: “Once we have a sound theory... the remaining problems of justice will prove more tractable in the light of it. With suitable modifications such a theory should provide the key for... other questions [pertaining to impairment]” (*TJ*, 7). For Rawls, therefore, disability is a peripheral concern at the margins of political life, so issues pertaining to cognitive and physical impairment are not appropriate considerations in the design of the basic structure of society.<sup>3</sup>

In *Political Liberalism*, Rawls again places people with disabilities beyond the scope of his proceduralist theory of distributive justice, discussing them as exceptions to the theory, or as unusual cases that distract philosophers from serious theorizing about the central principles of justice. For example, he writes,

Since we begin the idea of society as a fair system of cooperation, we assume that persons as citizens have all the capacities that enable them to be cooperating members of society. This is done to achieve a clear and uncluttered view of what is, for us, is the fundamental question of political justice... By taking this as the fundamental question we do not mean to say, of course, that no one ever suffers from illness or accident... But given our aim, *I put aside for the time being these temporary disabilities*

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<sup>3</sup> Rawls justifies putting disability aside elsewhere: “I also suppose that everyone has physical needs and psychological capacities within the normal range, so that problems of special health care and how to treat the mentally defective do not arise. Besides prematurely introducing difficult questions that may take us beyond the theory of justice, the consideration of these hard cases can distract our moral perception by leading us to think of people distant from us whose fate arouses pity and anxiety. Whereas the first problem of justice concerns the relations among those in the normal course of things are full and active participants in society and directly or indirectly associated together over the course of a whole life.” John Rawls, “A Kantian Conception of Equality,” in *Post-Analytic Philosophy*, John Rajchman and Cornel West, eds. (New York: Columbia University Press, 1985), 206.

*and also permanent disabilities or mental disorders so severe as to prevent people from being cooperating members of society in the usual sense” (PL, 20, emphasis added).*

Yet Rawls qualifies his claim here, making a distinction between cooperating and non-cooperating disabled persons, although he does not spell out who counts as a cooperating citizen, or what counts as legitimate cooperation. The most likely interpretation is that a cooperating citizen is one who works and contributes to the tax pool during most of her or his adult life. It can be reasonably assumed, therefore, that Rawls only sets aside cases of impairment that are in a certain sense absolute, the kinds of cases that render people completely unable to cooperate even after society has committed to making the necessary architectural, technological, and social accommodations necessary to allow them to contribute. Although Rawls himself does not provide an example of the kind of person who was to be excluded, we can presume that people with severe spinal cord injuries, people whose motor or communication skills are severely limited, and those with severe mental retardation might fall into this category. Nevertheless, physically and cognitively impaired members of the community who can exercise the moral capacities and work with only a few reasonable modifications (such as people in wheelchairs) presumably figure into Rawls’s theory.

In *Political Liberalism*, Rawls also suggests that issues pertaining to impairment (he mostly talks about medical expenses) can be dealt with in the legislative phase of his “four-stage sequence.” When discussing how to distribute primary goods— either in equal shares or in proportion to human variation in order to secure equal capabilities— he argues that “variations in physical capacities and skills” which put some citizens below the level of capabilities required to be a normal cooperating member of society “can be



dealt with... *at the legislative stage*.” It is, after all, at this stage that “the prevalence and kinds of these misfortunes are known and the cost of treating them can be ascertained and balanced along with the total government expenditure.” Furthermore, he claims that the aim of legislative decision-making should be “to restore people by health care so that once again they are fully cooperating members of society” (*PL*, 184).<sup>4</sup> From Rawls’s perspective, therefore, we cannot begin to address issues of physical and mental impairment without first settling the design of the basic structure of economic institutions and legal rights.

Writing in *Justice as Fairness*, Rawls goes on to assert that society has a duty to enable impaired individuals to become full members of society. Here he more clearly addresses cases in which “citizens fall temporarily— for a period of time — below the minimal essential capacities for being normal and fully cooperating members of society” (*JAF*, 171-172). In such cases, society has an obligation to provide medical care to enable such temporarily impaired people to “resume their normal lives as cooperating members of society” (*JAF*, 174). Once again, however, Rawls declines the opportunity to discuss what is owed to people with impairments who cannot exercise the moral capacities and who may never be able to contribute to social life. He explains, “I put aside the more extreme cases of persons with such grave disabilities that they can never be normal contributing members of social cooperation” (*JAF*, 170). Nevertheless, Rawls seems torn on this matter. Thus he writes in a footnote, “I take it as obvious, and accepted by

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<sup>4</sup> Rawls reiterates that issues of disability be worked out in the legislative phase elsewhere: “Perhaps the social resources to be fitted to the normal health and medical needs of... citizens can be decided at the legislative stage in the light of existing social conditions and reasonable expectations of the frequency of illness and accident... if the solution can be worked out for this case, then it may be possible to extend it to *the hard cases*.” John Rawls, “Social Unity and Primary Goods,” in *Collected Papers*, Samuel Freeman, ed. (Cambridge: Harvard University press, 1999), 368.

common sense, that we have a duty towards all human beings however severely handicapped” (*JAF*, 176). However, Rawls does not tell us whether these are duties of justice or charity. Moreover, in the same footnote he continues to acknowledge the limitations of justice as fairness in the case of severe impairment:

At some point, then, we must see whether justice as fairness can be extended to provide guidelines for these cases [of severe impairment]; and if not, whether it must be rejected rather than supplemented by some other conception. It is premature to consider these matters here... A method enabling us to discuss this question in a manageable way is surely worth looking for. I don't know how far justice as fairness can be successfully extended to cover the more extreme kinds of cases (*JAF*, 176).

As he leaves it, Rawls opens justice as fairness to the judgment of theorists concerned with the situation of the disabled. His personal intuitions lead him to believe that “we have a duty towards all human beings however severely handicapped,” but he is not sure whether or not justice as fairness can successfully include persons with impairments who cannot contribute over the course of a full life.

As we shall see in the following section, contemporary disability theorists have noted Rawls’s uncertainty, and there has been considerable disagreement on the question of how well people with disabilities fare under his model. For a variety of reasons, numerous scholars argue that people with disabilities fare quite well under Rawls’s theory of distributive justice. Some of these, such as Sophia Wong and Adam Cureton, defend Rawls on the grounds that he has been misinterpreted, while others, such as Cynthia Stark and Henry Richardson, attempt to amend his theory to better accommodate people with disabilities. With respect to the argument that Rawls has been misinterpreted, Adam Cureton (2008) argues that Martha Nussbaum’s interpretation of Rawls is misguided, and that disabled people can be beneficiaries of just arrangements without

participating in creating the rules of justice. Similarly, Sofia Wong (2009) suggests that Rawls's theory has been misunderstood. From her point of view, Rawls regards all citizens, including the cognitively disabled, as moral persons because people must only have the *potential* for developing the two moral powers in order to be owed justice. With respect to argument that justice as fairness should be slightly adjusted, Henry Richardson (2006) suggests that people with disabilities fare well if we amend justice as fairness by looking past Rawls's ideal of reciprocity by not considering it as an essential component of his social contract theory. Likewise, Cynthia Stark (2007) tries to modify Rawls's theory of distributive justice by abandoning the "fully cooperating assumption" at the second stage of the theory so that ideal constitutional conventioners can consider the particular needs of the disabled in the design of the basic structure of society. However, I find these arguments unpersuasive, and my reading sides with those who determine that justice as fairness cannot address the needs and interests of individuals with disabilities, at least not without extensive revisions that would likely alter the entire design of the social contract, thereby undermining its intended purpose.<sup>5</sup>

## II. *PUTTING JUSTICE AS FAIRNESS TO THE TEST*

The writings of John Rawls have been the subject of many critiques from disability scholars. This chapter focuses on the criticisms provided by Eva Kittay and Martha Nussbaum, in particular. Their writings encompass a variety of related criticisms,

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<sup>5</sup> For a fuller defense of justice as fairness and its just treatment of those with disabilities see Henry Richardson, "Rawlsian Social-Contract Theory and the Severely Disabled," *The Journal of Ethics* 10 (2006): 419- 462; Cynthia Stark "How to Include the Severely Disabled in a Contractarian Theory of Justice," *The Journal of Political Philosophy* 15 (2007): 127-145; Adam Cureton, "A Rawlsian Perspective on Justice for the Disabled," *Philosophy of Disability* 9 (2008); Sofia Isako Wong, "Duties of Justice to Citizens with Cognitive Disabilities," *Metaphilosophy* 4 (2009): 382- 401.

so for the sake of clarity the chapter groups their critiques into three broad categories of analysis: the circumstances of justice, the original position, and the purpose of social cooperation. Of course, there is considerable overlap between categories, but these distinctions serve to clearly illustrate Kittay and Nussbaum's claims that justice as fairness foundationally cannot procure justice for many disabled individuals.

### *The Circumstances of Justice*

Rawls's social contract theory borrows from David Hume's account of the circumstances of justice. According to Hume, justice is an "artificial virtue" that "arises from the circumstances... of mankind," meaning that in a context marked by scarcity and limited altruism, it is necessary to create rules of justice for people to live by.<sup>6</sup> Rawls describes the circumstances of justice as "the normal conditions under which human cooperation is both possible and necessary" (*TJ*, 109). What this definition means is that a particular kind of situation gives rise to the necessity of justice. He further divides these conditions into two kinds: objective and subjective circumstances. With respect to the objective circumstances, Rawls suggests that the condition of moderate scarcity is the central defining circumstance of justice. In addition, he argues that people must coexist together within a bounded society for justice to be possible (*TJ*, 126). Rawls also claims that "individuals are roughly similar in physical and mental powers," and that this natural equality makes contracting possible (*TJ*, 109-110).<sup>7</sup> With respect to subjective

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<sup>6</sup> David Hume, *A Treatise on Human Nature*, David Norton and Mary Norton, eds. (Oxford: Oxford University Press, 2000 [1739-1740]), 307.

<sup>7</sup> In *Political Liberalism*, Rawls elaborates on his assumption that there is some measure of rough physical and mental equality among persons: "I have assumed... that while citizens do not have equal capacities, they do have, at least to the essential minimum, the moral, intellectual, and physical capabilities that enable

circumstances, Rawls assumes that human beings have roughly similar needs and interests, and perhaps most important because people will have different conceptions of the good, they will make conflicting claims on the natural and social resources available (*TJ*, 109-110). In addition, Rawls assumes that political persons have two moral powers: the capacity for a sense of justice and the capacity for a conception of the good. He considers the two moral powers as “the necessary and sufficient condition for being counted as the full and equal member of society in questions of political justice. Those who can take part in social cooperation of a complete life... are regarded as equal citizens” (*PL*, 302).

Theorists concerned with disability take issue with Rawls’s foundational assumptions about the circumstances of justice. Kittay is concerned that nowhere in Rawls’s work is human dependency explicitly cited among the circumstances of justice, and she argues that the inescapable condition of human dependency should inform theories pertaining to the just arrangement of the major political and social institutions—the political constitution, the economy, the family, etc.— of a liberal society. For her, dependency is integral to both the objective and subjective circumstances of justice. Objectively, it is a fundamental, inescapable, structural feature of our lives, one that gives rise to the need for just arrangements to evenly distribute the benefits and burdens of care. All people are helpless during infancy, many have permanent and/or temporary physical and mental impairments throughout the lifecycle, and most people will demand assistance from others as they age. Dependency also affects the subjective circumstances

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them to be *fully cooperating members of society over a complete life*” (*PL*, 183, emphasis added). This idealization has come to be known as the “fully cooperating assumption.”

of justice, in that it influences our needs and desires as vulnerable beings who must unavoidably receive and also provide care for others (*LL*, 83-85). Any adequate theory of distributive justice needs to recognize that as political persons we make choices within webs of interdependent relationships.<sup>8</sup>

In addition, Martha Nussbaum contributes to a disability critique of the circumstances of justice by taking aim at Rawls's assumption that individuals are roughly similar in physical and mental powers, and that they are fully cooperating members of society over a complete life. Why does Rawls presume that people are roughly similar? Quite simply, this assumption makes the prospect of reaching agreement possible because the similarity of the parties enables the contracting process to proceed in good faith. As disability scholars Anita Silvers and Leslie Francis explain, "Their likeness to each other can explain how even the most self-absorbed parties are attracted to agreements ... their homogeneity facilitates each party's not entertaining doubts about the legitimacy of others..."<sup>9</sup> Hence, homogeneity is assumed to be politically efficacious on the grounds that it fosters cooperation and trust.

Yet as Nussbaum argues, the presumption that all political persons are rational, free, equal, and independent is especially problematic from a disability perspective because narrowly defined criteria of political personhood prove exclusionary. Those lacking the attributes deemed necessary to enter into contracts for mutual advantage— the capacity to exercise rational decision-making, develop moral capacities, communicate to

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<sup>8</sup> Like Kittay, Nussbaum suggests that in creating a system of social cooperation for mutual advantage, Rawls "effaces the more asymmetrical forms of dependency that human life contains: the need for care in infancy, extreme age, and periods of severe illness or a lifetime of severe disability" (2001, B9). Nussbaum, "The Enduring Significance of John Rawls," *The Chronicle of Higher Education* 2 (2001): B7–B9.

<sup>9</sup> Anita Silvers and Leslie Francis, "Justice through Trust: Disability and the 'Outlier Problem' in Social Contract Theory," *Ethics* 116: 46.

others, and engage in wage labor— are subsequently not qualified to create the rules of justice. As Nussbaum explains,

The classical theorists [including Rawls] all assumed that their contracting agents were men who were roughly equal in capacity, and capable of productive economic activity... So it was not surprising that the classical social contract thinkers failed to imagine them as participants in the choice of political principles... For many people with impairments and disabilities, who are fully capable of participating in political choice, this omission from the situation of basic choice already seems to be a defect from the point of view of justice... This problem seems all the graver when we recognize that many of the factors that sometimes exclude people with impairments from participation in political choice are social and far from inevitable. Thus there is no principled reason why they could not have been included in a choice situation... (*FJ*, 14-15).

Here Nussbaum's views are in line with the social model of disability, as she emphasizes that many people with disabilities are not naturally unequal, but are instead rendered dependent, unfree, and unable to contribute to their fullest capacity due to discriminatory public planning and social barriers. By contrast, Rawls's presumption that people with impairments are naturally unequal and unable to contribute to political life is congruent with the medical model of disability, which targets the individual, impaired body as the "problem" in need of "fixing."

The assumption that individuals are roughly similar in physical and mental powers, and also able to contribute over a full life, is extremely misleading. It ignores that fact that not a single citizen embodies the ideal of full functioning throughout a lifetime, and it is particularly unfair to people with severe impairments who are absolutely unable to cooperate in socially valued activities like paid labor, even after society has committed to making necessary architectural, technological, and social accommodations. Despite her endorsement of the social model of disability, Nussbaum comes to terms with the fact that "some people with severe mental impairments...could not be included in the group

of political choosers directly, however generously we assess their potential for such a contribution” (*FJ*, 15). Nonetheless, she claims that even in such cases inclusion is possible. What is required is an expansive understanding of contribution. When a person with a severe cognitive impairment cannot communicate her wishes, vote for preferred candidates, or serve on juries, justice “requires that the person’s guardian be empowered to exercise the function on that person’s behalf and in her interests.”<sup>10</sup> Here Nussbaum insists that collaborative, interdependent cooperation is made possible through practices of surrogacy and guardianship, which counters Rawls’s assumption that a specific (i.e. able-bodied) type of person can contribute to political life in a specifically able-bodied mode of participation.<sup>11</sup> Nussbaum and Kittay’s critiques ultimately suggest that an adequate theory of disability justice must embrace bodily and cognitive diversity in order to create rules of justice across lines of embodied difference and webs of human interdependency.

### *The Original Position*

Rawls believes that the primary task of political philosophy is to identify principles of justice that delineate fair terms of social cooperation, so that the benefits and

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<sup>10</sup> Martha Nussbaum, “The Capabilities of People with Cognitive Disabilities,” *Metaphilosophy* 40 (2009): 347.

<sup>11</sup> Many disability scholars and activists are understandably skeptical of returning to a politics of paternalism. Nussbaum is not unaware of some of the potential pitfalls of guardianship, especially in the context of voting, but she merely concedes that there are few alternatives for representation: “[T]here is room for corruption in this process: the guardian may just vote his or her preferences and ascribe them to the person with a disability, thus doubling the guardian’s own vote. It should be clear on reflection, however, that this is no more a problem for voting than it is in many other areas where we currently permit surrogate arrangements: property rights, health decisions. A decent guardian will be able to keep those interests apart. Sometimes a candidate’s positions will favor certain interests of the guardian that are not shared with the person with a disability, and the guardian should be able to see this. (Once again, law would need to protect the person against the sort of coercion and manipulation that group home settings make possible).” Nussbaum, “The Capabilities of People with Cognitive Disabilities,” 347.



burdens of society can be justly distributed within the political society. He proposes that a society should select the principles of justice from behind a “veil of ignorance” in order to prevent arbitrary characteristics and personal interests from unfairly influencing the processes of deliberation. From behind the veil of ignorance, “no one knows his place in society, his class position or social status; nor does he know his fortune in the distribution of *natural assets and abilities*, his intelligence and strength, and the like” (*TJ*, 118, emphasis added). According to Rawls, the parties in the original position should see themselves as representing citizens whose characteristics they do not know, but who have the two moral powers— the capacity for a sense of justice and capacity for the conception of the good— that enable them to be normal cooperating members of society over a complete life (*JAF*, 18-19, 86-87; *PL*, 79). The original position is intended to simulate a state of equality by evening the playing field in the decision-making process, for, according to Rawls, if “all are similarly situated and no one is able to design principles to favor his particular condition, the principles of justice are the result of a fair agreement or bargain” (*TJ*, 11).

While the decision-makers in Rawls’s original position are assumed to be neutral and able to identify with the experiences of others based on the possibility that they themselves might be the “other” once the veil is lifted, critics note that it is very unlikely that people in this initial choice situation would be able to transcend the particularity of their own experiences. This critique raises questions about whether neutrality is possible, or even desirable, when creating the rules of justice. According to Nussbaum, those best served by the design of principles of justice are those who have designed them. If people with disabilities lack the attributes— the rationality, moral capacities, and/or ability to

communicate— deemed necessary to enter into contracts, the rules of justice will likely be designed without their unique perspectives and needs in mind. Thus while Rawls believes that a lack of knowledge about one’s social standing is necessary for democratic decision-making, Nussbaum rejects the possibility of neutrality, claiming that “the fact that they [people with disabilities] are not included in the group of choosers means that they are not included... in the group of those for whom principles are chosen” (*FJ*, 16).<sup>12</sup> She elaborates on the relationship between being a subject of justice (a chooser of the principles of justice) and the object of justice (a beneficiary of the principles of justice), noting the implications for disability politics:

Such people [children, the elderly, those with disabilities] are clearly absent from the contracting group— and... they are *ipso facto* absent from the group of citizens for whom the principles of justice are framed. Their interests might possibly be handled at some later stage. But their needs do not shape the parties’ choice of basic political principles, or even their conception of the primary goods of a human life... Thus issues that seem extremely important for social justice—issues about the allocation of care, the labor involved in caring, and the social costs of promoting the fuller inclusion of disabled citizens— fail to come into focus... (*FJ*, 33).

Nussbaum’s critique resonates with disability studies scholars who have alerted us to the fact that while neutrality may be desirable in theory, it is not possible in practice. Studies suggest that people without disabilities are often unable to identify with the experiences of those with them due to their own negative biases about disability. The finding that people with serious and persistent disabilities reported good or excellent quality of life, in contrary to able-bodied expectations that disabled lives are not worth living, has been

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<sup>12</sup> Rawls claims that “if the knowledge of particulars is allowed, then the outcome is biased by arbitrary contingencies” (*TJ*, 122).

termed “the disability paradox.”<sup>13</sup> Ultimately, the implication is that disabled people’s absence in processes determining the rules of justice will lead to unjust outcomes. For example, the 1964 Civil Rights Act— which prohibited discrimination against racial, ethnic, and religious minorities and women— was designed without the consultation of disabled people, and as a result people with disabilities were not considered a protected class until the passage of the ADA in 1990, only after numerous disability protests and letter campaigns put pressure on President George H.W. Bush to act on behalf of disabled Americans.

Kittay adds another layer to the critique by considering the unique needs and experiences of care workers for those with disabilities. In Rawls’s formulation, she argues, there is no guarantee that the parties in the original position will think of themselves as a person who will have the responsibility to provide care for a person with a physical or cognitive impairment. As Kittay notes,

While the Rawlsian construct allows for the possibility that representatives *may* imagine himself or herself as a dependent or having responsibility for a dependent’s care, it does not necessitate the representative *will* do so when choosing the principles for a well ordered society... Surely, some persons, envisioning themselves as having dependency responsibilities, may choose to adopt other-directed interests as their own. But this makes the representation of these dependents a contingent matter and not one integral to the procedure determining the principles of justice (*LL*, 86).

In sum, Nussbaum and Kittay both think it is highly unlikely that Rawls’s account of procedural justice can generate just distributional outcomes *without* including disabled people and considering their unique perspectives and needs (or at least consulting caregivers who can act as guardians on their behalf). They suppose as well that even if

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<sup>13</sup> For a fuller discussion of the “disability paradox” see Gary Albrecht and Patrick Devlieger, “The Disability Paradox: High Quality of Life against All Odds,” *Social Science and Medicine* 48 (1999): 977-988.

the needs of the disabled are considered during the legislative phase, as Rawls recommends, their integration back into the social fabric, after it has been designed without their needs in mind, will be inadequate. This is especially apparent in the cases such as where inaccessible buildings and services cannot be easily restructured to allow wheelchair access and other accommodations because it would be too difficult, placing an “undue burden” on the provider of such services.

### *The Purpose of Social Cooperation*

According to Rawls, “society is a cooperative venture for mutual advantage” (*TJ*, 4). This assumption is the starting point of most social contract theories. In explaining why living under a government’s rule is better than living without a government at all (i.e. in the “state of nature”), social contract theories appeal to the logic of rational self-interest. We are motivated to engage in social cooperation, so the logic goes, because it is advantageous for all participants. Indeed, although a person may have to forfeit some natural freedoms, the benefits of participating in the social contract are assumed to outweigh the costs. Otherwise why would people freely enter into cooperative arrangements? The assertion that society is a cooperative venture for mutual advantage links political membership to contribution because contracting parties only cooperate with those who are capable of reciprocating benefits. In this way, the assertion that society is a cooperative venture for mutual advantage also assumes that political behavior is motivated by self-interest.

The problem with this line of thinking, as far as disability is concerned, is that Rawls’s theory has no way to build into its foundations an explanation for why we should agree to create forms of social organization that will support and nourish some people

who will never be capable of returning the favor. Nussbaum believes that Rawls's commitment to mutual advantage, and the related assumption that people are primarily motivated by self interest, poses a major stumbling block for those with severe disabilities. In her analysis of social contract theory she writes,

To include in the initial situation people who are unusually expensive or who can be expected to contribute far less than most to the well-being of the group... would run contrary to the logic of the whole exercise. If people are making a cooperative arrangement for mutual advantage, they want to get together with those from cooperation with whom they may expect to gain, not those who will demand unusual and expensive attention without contributing anything much to the social product, thus depressing the level of society's well-being (*FJ*,104).

According to Nussbaum's interpretation, justice is owed only to those rational and moral agents with whom one interacts in a mutually beneficial way. Accordingly, justice is not owed to any of the following: rational agents with whom one interacts but from whom one derives no benefits; rational agents with whom one does not interact because they are very far away; sentient but non-rational beings that one interacts with in the natural environment; and rational agents with whom one does not interact because they are in the future or past. Nussbaum's interpretation is rooted in Rawls's text, as he explicitly acknowledges the inadequacies of his theory by citing the following four stumbling blocks for justice as fairness: what is owed to people with mental and physical disabilities; justice across national boundaries; what is owed to animals and the rest of nature; and the problem of saving for future generations (*PL*, 20-21). Put simply, justice as fairness proves to be exclusionary since people who cannot reciprocate benefits to others are not owed justice.<sup>14</sup>

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<sup>14</sup> When discussing reciprocity and mutual benefit, Rawls writes "fair terms of cooperation articulate idea of reciprocity and mutuality: all who cooperate must benefit, or share in common burdens, in some appropriate fashion judged by a suitable [able-bodied?] benchmark of comparison" (*PL*, 300).

Kittay also critiques Rawls's understanding of reciprocity and mutual advantage. She calls Rawls's version of reciprocity "exchange reciprocity," which requires that efforts exerted on one person's behalf will be met by some equivalent exertion on the second party's part (*LL*, 67). This understanding of reciprocity is zero-sum, meaning that it does not allow for asymmetrical relationships and exchanges. The problem is that in relations between people with disabilities and their immediate caregivers (or even their larger social community), an impaired individual may not be in a position to reciprocate in kind. Thus her critique suggests that a theory of justice that includes disabled people with all kinds of impairments simply cannot demand perfectly equal reciprocal contributions from all persons.

### III. *ALTERNATIVES TO JUSTICE AS FAIRNESS*

It follows that Rawls's model cannot achieve justice for individuals with impairments because their unique perspectives and needs cannot be accommodated on three counts: 1) the condition of human dependency is omitted from the circumstances of justice, 2) those lacking the moral capacities who cannot contribute over the course of a full life are excluded from the original position and initial choice situation, and 3) the assumption that society is a cooperative venture for mutual advantage cannot explain why we should agree to create forms of social organization that will support and nourish some people who will never be capable of returning the favor. In response to these shortcomings, Kittay and Nussbaum have advanced alternative formulations—"justice as caring" and "the capabilities approach," respectively—arguing that their models of justice are more responsive to the situation of the disabled and the wider political

community. This section assesses the merits and drawbacks of each approach, and ultimately suggests that some combination of Nussbaum's capabilities approach and Kittay's care theory is best equipped to achieve adequate distributive justice for the disabled.

### Justice as Caring

Eva Kittay argues that any adequate theory of political justice must attend to the distribution of care. In *Love's Labor* (1999), Kittay introduces the concept and principle of *doulia* to explain her understanding of political care, and what it entails. As a starting point, Kittay argues that people who provide care to others in the private sphere—for example, mothers who care for children with disabilities—have a right to receive public institutional care in return. The public ethic of *doulia* is derived from *doula*, the person who serves as a postpartum caregiver who assists a new mother after giving birth. According to Kittay, the ethic of *doulia* is captured by the colloquial phrase “what goes around comes around,” meaning that if someone helps another in need, we will provide the conditions that will allow the helper to survive and flourish (*LL*, 106-107). At the most basic level, Kittay's work importantly addresses the reality that caregivers also require care, as we are all positioned in intricate webs of interdependency, with most people simultaneously providing care while needing to be cared for themselves. So just as a caregiver has a personal responsibility to care for a dependent, Kittay argues that the larger political society has a duty to attend to the well-being of caregivers in order to enable them to fulfill personal duties to dependents *without* exploitation.

What does this entail? Society has an obligation to act as a *doulia* for caregivers, which for Kittay entails creating social policies that can assume many of the costs of caring for profoundly impaired individuals. She elaborates on what a political principle of care requires:

In order to grow, flourish, and survive or endure illness, disability and frailty, each individual requires a caring relationship with significant others who hold that individual's well-being as a primary responsibility and a primary good. But for a society to attend the need for care and to do so justly, it is not sufficient for the dependency worker allowed to be caring. There must be principles that secure social institutions providing aid and support for dependency workers and their caring responsibilities. This requires the broadest conception of reciprocity... expressed in the concept of *doulia*. *Doulia*, so conceived, requires that the value of receiving care and giving care would be publicly acknowledged; that the burden of the cost incurred by doing the work of caring for dependents would not fall to the dependency worker alone... and that the commitment to preserving caring relations would be assumed by the society (*LL*, 109).

In practice, *doulia* requires measures such as providing welfare payments to impoverished single mothers, paid parental leave, funding for special education, universal health care, and even direct payments to care workers (*LL*, 117-146).

Ultimately, Kittay's concept of *doulia* is attractive in several regards. First, it offers a formulation of reciprocity that can potentially accommodate asymmetries between people without exploiting a caregiver's labor or ignoring the contributions of impaired individuals. Kittay goes so far as to appeal to a revised version of Karl Marx's understanding of reciprocity: "To each according to his or her need for care, from each according to his or her capacity for care, and such support from social institutions as to make available resources and opportunities to those providing care, so that all will be adequately attended in relations that are sustaining" (*LL*, 113). This understanding of reciprocity serves a reminder that social policies (or lack thereof) that influence disabled



people's lives also affect their family members, friends, and professional caregivers. In addition, such an approach to reciprocity breaks down the false able/disabled, independent/dependent, caregiver/recipient dichotomies that stigmatize beneficiaries of care and social services. If those giving care are recipients of social services, it will challenge the idea that "dependents" are a distinct class of people.

Second, her formulation is inclusive because it severs the link between entitlement and contribution, and does not require citizens to be similar. For Kittay, we are entitled to care by virtue of the fact that we are all human. While liberal theorists of distributive justice make claims for equal treatment based on capacities we possess or choices we make, Kittay suggests that persons are not defined by capacities or choices, but by their relationships with other human beings. In Kittay's words, we are all entitled to care because "everyone is some mother's child," meaning that all people are deserving of care by virtue of our necessary relationships with others (*LL*, 23).

Yet Kittay's approach has several potential limitations. Equating justice with caring attempts to distribute the burden of care equally, but in practice care has the potential to codify patriarchal relations. Although men have increased their participation in caregiving responsibilities over the past decade, it is still the case that women manage and perform the bulk of care work in the home. Women continue to be associated with care of dependents, and now that more women are working outside the home, women and men of color, including a large population of immigrant workers, are assuming caregiving jobs— as nannies, geriatric home employees, disability assistants— in the privatized care market. Most of these jobs remain underpaid. Kittay would not condone these care arrangements, and would consider them to be a source of great injustice. But

the point is that because domestic labor and care work are still not as highly valued as other forms of wage labor, the burden of care continues to be assigned to the least powerful in society. Hence, despite her call to value care work, Kittay does not spell out how to enact a cultural shift that will disrupt the traditional division of labor and encourage men and other privileged groups to assume responsibility for performing care work. It is in this context that Joan Tronto, a proponent of an ethic of care, admits that “in focusing on the preservation of existing relationships, the perspective of care has a conservative quality.”<sup>15</sup>

Moreover, care politics can easily slide into excessive paternalism. To relate to others primarily by being helped by them implies subordinating one’s choices to those of one’s caretaker. Disability scholar Anita Silvers is especially hesitant to endorse the politics of care for fear of paternalism. As she puts it,

Modeling social organization on being cared for and caring thus appears to make compliant behavior a mandate for persons with disabilities. For them, submissiveness remains the price of good treatment. In a framework of moral relations in which some must make themselves vulnerable so that others can be worthy of their trust— that is, in paternalistic systems, in which those viewed as incompetent are coerced into compliance “for their own good”— people with disabilities are typecast as subordinate (1998, 100).<sup>16</sup>

While I disagree with Silver’s view that this arrangement is necessarily oppressive to those with impairments because many guardians respect disabled individuals’ autonomy, it must be acknowledged that care can easily degenerate into exploitation and oppression given the asymmetrical relationships between the parties. Thus if insufficient attention is

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<sup>15</sup> John Tronto, “Beyond Gender Difference,” *Signs: Journal of Women in Culture and Society* 12 (1987).

<sup>16</sup> Anita Silvers, “Formal Justice,” in *Disability, Difference, Discrimination: Perspectives on Justice in Bioethics and Public Policy*, eds. Anita Silvers, David Wasserman, and Mary Mahowald (Lanham, Maryland: Roman and Littlefield Publishers, Inc., 1998), 100.

paid to individual rights, those with disabilities could be subjected to mistreatment from caregivers.<sup>17</sup> In order to avoid paternalism, caregiving arrangements must acknowledge and respect human dependence and independence equally, so that the wishes, preferences, and concerns of disabled individuals are taken seriously.

Perhaps the biggest limitation of Kittay's arrangement, however, is that justice as caring is an amendment to justice as fairness, rather than a fully formed alternative. It is important to note that after spending a great deal of time pointing out the inadequacies of Rawls's theory, Kittay recommends that we remedy the situation by simply adding care to our list of primary goods derived from the original position (*LL*, 100-104). As long as those principles of justice assume that disability and dependency are pervasive and unavoidable features of human life, and that caregiving work is therefore a constant necessity and chore, justice can be said to be achieved.

### The Capabilities Approach

The capabilities approach was originated by economist Amartya Sen and greatly expanded by Martha Nussbaum. It focuses on the "capability set that a person has, that is, the substantive freedoms that he or she enjoys to lead the kind of life he or she has reason to value."<sup>18</sup> In *Frontiers of Justice* (2006) and *Creating Capabilities* (2011), Nussbaum attempts to ensure justice for the disabled through this approach. At the most general level, she gives an account of the core human entitlements to be honored and implemented by all governments as a bare minimum of what respect for human dignity

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<sup>17</sup> For a fuller discussion of the dangers of paternalism see Anita Silvers, "Reconciling Justice to Equality: Caring (f)or Justice for People with Disabilities," *Hypatia* 10 (1995): 30-55.

<sup>18</sup> Amartya Sen, *Development as Freedom* (New York: Knopf, 1999), 87.

requires. She provides a comprehensive description of the central features of the capabilities approach in some detail:

The Capabilities Approach can be provisionally defined as an approach to comparative quality-of-life assessment and theorizing about basic social justice. It holds that the key question to ask, when comparing societies and assessing them for their basic decency or justice, is, “What is each person able to do and to be?” In other words, the approach takes *each person as an end*, asking not just about the total or average well-being but about the opportunities available to each person. It *is focused on choice or freedom*, holding that the crucial good societies should be promoting for their people is a set of opportunities, or substantial freedoms, which people then may or may not exercise in action: the choice is theirs. It thus commits itself to the respect for people’s powers of self definition. The approach is resolutely *pluralist about value*: it holds that the capability achievements that are central for people are different in quality, not just in quantity; that they cannot without distortion be reduced to a single numerical scale; and that a fundamental part of understanding and producing them is understanding the specific nature of each. Finally, the approach is *concerned with entrenched social justice and inequality*, especially capability failures that are the result of discrimination and marginalization. It describes an *urgent task to government and public policy*— namely, to improve the quality of life for all people, as defined by their capabilities (CC, 18-19).

For the purposes of this analysis, I suggest that these core features can be compared to justice as fairness on three counts: 1) the emphasis on capabilities and freedom; 2) the thin conception of the good; and 3) the perceived responsibility of the state. First, the capabilities approach differs from Rawls’s primary goods approach by emphasizing that the distribution of social goods is always a means to promoting capabilities and providing substantive opportunities to flourish. Nussbaum describes capabilities as “a set of (usually interrelated) opportunities to choose and to act.” For her, capabilities “are not just abilities residing inside a person but also the freedoms or opportunities created by a combination of personal abilities of the political, social, economic environment” (CC, 20). Yet her understanding of freedom is more in line with

the social model of disability, as she argues that each internal capability of any human being always assumes the presence of appropriate external conditions for its realization. Conversely, these external conditions will necessarily affect the particular way in which any given internal capability will be expressed or realized. A person's ability to labor, for example, should not be understood as a "given" property of that person since the "natural" capacity to labor depends upon how one can interact with one's social environment. In Nussbaum's words,

People with impairments... can usually be highly productive members of society in the usual economic sense, performing a variety of jobs at a sufficiently high level, if only society adjusts its background conditions to include them. Their relative lack of productivity under current conditions is not "natural"; it is the product of discriminatory social arrangements. People in wheelchairs can get around just fine, and do their work, so long as buildings have ramps, buses have wheelchair access, and so on. People who are blind can work more or less anywhere in these days of varied audio technology and tactile signage, if the workplace includes these technologies... (*FJ*, 113).

Here Nussbaum highlights how any human power, ability, or capacity is relationally realized. Even those whom we consider able-bodied are also dependent upon innumerable external conditions— such as paved roads and bus routes for transportation, access to clean water, etc.— to perform work at the highest possible level (*FJ*, 116-117). In contrast to Rawls's assumption that disabled people innately "cannot cooperate in the usual sense," Nussbaum's capabilities approach understands the securing of individual freedom as an affirmative task, since as a political society we can make decisions that will provide the external conditions necessary to allow diverse bodies to flourish (*FJ*, 287). Thinking about the relationship between an individual, her environment, and freedom, Nussbaum concludes that "one job of a society that wants to promote the most important human capabilities is to support the development of internal capabilities—

through education, resources to enhance physical and emotional health, support for family care and love, a system of education, and much more” (*CC*, 21-22) What this means for distributive justice is that goods such as money are not ends in and of themselves; rather, they are instruments for freely exercising choice.

Second, the capabilities approach is motivated by a desire to reconcile the liberal respect for individual freedom with an Aristotelian conception of human well-being. While Rawls avoids linking a conception of justice with a theory of the good, Nussbaum (following Kant) holds that all people, including those with severe impairments, are individually worthy of human dignity, and that every person must be treated as an end in herself. Nussbaum elaborates her conception of the human good through a detailed list of capabilities that define a uniquely human— as opposed to animal or mechanical— mode of existence.<sup>19</sup> Following Marx’s understanding of human life as a “species being,” she supposes that these elements of a life worth living are plural and not singular. For this reason, she claims that “if people are below the threshold on any one of the capabilities, that is a failure of basic justice, no matter how high up they are on all others” (*FJ*, 167). Thus, in appealing to the good, Nussbaum provides an explanation of why we should agree to create forms of social organization that will support and nourish severely impaired people who will never be capable of returning the favor. Moving beyond self-regarding formulations of social cooperation toward other-regarding ones, her theory of justice “envisages human beings as cooperating out of a wide range of motives, including

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<sup>19</sup> She identifies 10 central capabilities that constitute an individual’s capabilities set, including: living; being healthy; moving and enjoying bodily integrity; sensing, imagining, thinking; having emotions; reasoning practically; affiliating with others with reciprocal concern and respect; showing concern for other species; playing; and controlling one’s political and material environment (*FJ*, 76-78).

the love of justice itself, and prominently including a moralized passion for those who have less than they need to lead decent and dignified lives” (*FJ*, 157).

Finally, perhaps the most important distinguishing feature of the capabilities approach is that it focuses on just outcomes instead of just procedures. Like Rawls, Nussbaum concerns herself with matters of distributive justice. Unlike Rawls, however, she proposes an outcome-based theory. Because she lacks faith in the ability of social contract theories to generate just outcomes (due to exclusionary criteria for membership in choosing the principles of justice), she designates these outcomes herself, in the form of threshold levels of capabilities. By designating the minimal threshold level of entitlement, the approach holds promise for disabled citizens because a just society has an overriding obligation to provide everyone— regardless of their different abilities to represent themselves or contribute to the common surplus— the resources necessary to live a dignified life. In this way, the capabilities approach has much in common with human rights theories of entitlement.<sup>20</sup> Subsequently, Nussbaum is able to justify the social entitlements of the disabled according to the same logic used to justify the social entitlements of able-bodied persons. This consistency is important because it does not create stigmatized beneficiaries of “special rights.” Moreover, it rejects welfare metrics commonly applied to theories of distributive justice on the grounds that such metrics cannot adequately illuminate the life circumstances or needs of any particular individual. Individuals may require different levels of resources in order to achieve their potential. In the case of disability, this is important because an impaired person may not be able to do

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<sup>20</sup> Like human rights approaches, Nussbaum’s capabilities approach appeals to pre-given human entitlements: “... The capabilities approach, again as both Sen and I have developed it, holds very clearly that the relevant entitlements are prepolitical, not merely artifacts of laws and institutions” (*FJ*, 285).

many things an able-bodied individual can do with the same bundle of commodities, or primary goods. Hence it is appropriate to give individuals different resources to provide them with the minimal threshold of capabilities.

Yet the capabilities approach is not without limitations. First, as Nussbaum admits, it cannot help us decide how resources should be distributed after people have reached the minimal threshold of human functioning. In her words, the capabilities approach “is a social-minimum approach, and I have always said that for this reason it is but a partial theory of social justice: it doesn’t say what should be done about inequalities above its rather ample threshold.”<sup>21</sup> This definition raises the question of whether or not states have obligations to provide resources for developing functions above minimal levels. Another obvious problem related to the measurement of entitlement regards the practical issue of how the state should go about comparing welfare levels interpersonally. Under a capabilities model of justice, states would be required to calibrate the level of entitlement to every individual’s needs in order to ensure that each is capable of leading a fully human life. Yet Nussbaum does not spell out how we should measure the just level of entitlement interpersonally.

Second, because the central human capabilities concern the “characteristic activities” of the species, and because “species norms” are essential to the approach, some disability scholars are concerned that those who seem to fall short of having “normal” capabilities may be stigmatized for their failures. In other words, people understand humanity in widely different ways, and any attempt to produce a list of essential capabilities is bound to enshrine certain understandings of the human and

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<sup>21</sup> Nussbaum, “The Capabilities of People with Cognitive Disabilities,” 332.



demote others. When human capabilities are identified with the good, impaired people who are reluctant to be improved by being made “more capable” may be met with disparagement, as is the case with social pressures brought to bear on deaf individuals to use cochlear implants rather than rely on sign language interpreters (precisely because the typical mode of communicating makes them better able to participate without being burdensome to others).<sup>22</sup>

Thus while Nussbaum suggests that the capabilities list that she provides is fluid and should remain open-ended so that we can learn from our encounters with other human societies, the list is nonetheless essentialist insofar as it determines what counts as a human life. The criteria that Nussbaum sets up have the power to judge when someone does not count as human, and given the fact that oppressive regimes have often dehumanized disabled individuals in order to justify their mistreatment, this power should be seriously scrutinized. In her defense of Aristotelian essentialism, Nussbaum addresses this issue, writing that the capabilities approach should “proceed as if every offspring of two human parents has the basic capabilities, unless and until long experience *with the individual* has convinced us that damage to that individual’s condition is so great that it could never in any way... arrive at the higher capability level.”<sup>23</sup> She includes people with irreversible dementia and people living in a vegetative state in this group, and she claims that such individuals would fall outside the scope of the capabilities approach. For Nussbaum, this does not mean that the political community would be licensed to “treat

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<sup>22</sup> Anita Silvers and Michael Stein, “Disability and the Social Contract,” *The University of Chicago Law Review* 74 (2007): 1626-1627.

<sup>23</sup> Martha Nussbaum, “Human Functioning and Social Justice: in Defense of Aristotelian Essentialism,” *Political Theory* 20 (1992): 228.

such individuals harshly,” but only that such individuals would not be owed resources to make them fully functioning and capable beings.<sup>24</sup> As with Rawls’s social contract theory, Nussbaum’s capabilities approach, as it currently stands, may be ill-equipped to decide what, if anything, political societies owe to severely disabled individuals.

#### IV. *CONCLUSION*

In a paper written for the annual conference for the Society for Disability Studies in 2011, political theorist Nancy Hirschmann made a bold and controversial claim: political theorists and philosophers should halt their pursuit of justice for the disabled. According to Hirschmann, there are two central problems with taking justice as the primary focus for disability politics. The first is that focusing on distributive justice buys into “the medical model of disability.”<sup>25</sup> Hirschmann contends that theorists concerned with distributive justice—and how individual resources, opportunities, and welfare should be allocated throughout society—tend to treat impairments as functional limitations that generate various distributive claims. Hirschmann is critical of the link between distributive justice and the medical model of disability, noting that because justice is compensatory and “by its nature cannot be conceived without past injury,” the pursuit for compensation necessarily invokes impairment itself as something in need of “fixing.” As she states,

The most famous philosopher of justice, John Rawls, limits his understanding of disability to “accidents and illnesses,” with medical care being the appropriate response to “return the person to a cooperating

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<sup>24</sup> Nussbaum, “Human Functioning and Social Justice,” 228.

<sup>25</sup> Nancy J. Hirschmann, “Disability: A Question of Justice? Or a Question of Freedom?” (paper prepared for the Annual Meeting of the Society for Disability Studies, San Jose, CA, June 16, 2011), 2.

state”... [Yet] the notion that blindness or deafness or CP or post-polio syndrome or spinal cord damage is a supreme loss to the individual, a tragedy that the individual would want to overcome at all cost, constructs the notion of “the disabled” into a tragic figure, dependent, sick, weak, and unable to make any but the barest contributions to the collective social welfare. The terminology used to describe us—handicapped, crippled, disabled, impaired—presents imagery of loss, deprivation, tragedy, and subhumanity...<sup>26</sup>

Hence, the demand for justice replicates the able-bodied view of the disabled as diminished, somehow lacking, and lesser-than-human. As Hirschmann explains, this perspective is detrimental to progressive disability politics because “it accepts as given the limitations of the built environment, the biases against certain cognitive orientations, and imports certain assumptions into its evaluation of what justice requires that distorts the claims of the disabled.”<sup>27</sup> Second, Hirschman claims that focusing on justice is problematic because justice is focused on the past. In Hirschmann’s view, “justice is always a remedy for injury,” so the pursuit for justice “is inevitably backward looking” and “locks the justice seeker into Nietzsche’s *ressentiment*.”<sup>28</sup>

Instead of spending time licking old wounds, so to speak, Hirschmann urges disability theorists to preoccupy themselves with the maximization of freedom. Political theorists should shift their focus away from justice toward freedom in order to move from discussions of “fixing” disabilities towards discussions about how to remove barriers and ensure equal access to the public realm. For Hirschmann, looking at disability from the perspective of freedom ultimately makes “the social model” of disability intelligible. Because disability is not intrinsic to any given body, but is instead the byproduct of

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<sup>26</sup> Hirschmann, “Disability: A Question of Justice?,” 3.

<sup>27</sup> Hirschmann, “Disability: A Question of Justice?,” 2.

<sup>28</sup> Hirschmann, “Disability: A Question of Justice?,” 4.

narrowly designed public facilities, we must adapt our built environments in order to enable disabled individuals to freely pursue basic life activities, such as working, receiving an education, and completing basic daily tasks. According to this line of thought, goods— such as money, resources, and power— should be thought about as instruments for freedom, not as ends in and of themselves. In her final appeal, Hirschmann declares that “freedom thus frees us from the conceptual and political baggage of the past and moves us into the future.”<sup>29</sup>

Yet Nussbaum’s capabilities approach should assuage Hirschmann’s concerns. As an approach to distributive justice that aims to equalize people or reduce inequality according to a metric of human flourishing, it does not inevitably demean or pathologize people with disabilities. Although Nussbaum may regard impairments as undesirable if they are so extreme that one cannot lead a recognizably human life, she generally treats the social environment, not the impaired body, as the source of disadvantage. In line with a commitment to the social model, her claims to distributive justice for persons with disabilities require political communities to modify their institutional environments and practices to accommodate bodily and cognitive variation so that all individuals can achieve the capabilities necessary to live a good life.

Second, maximizing freedom is at the heart of the capabilities approach. Justice is not antithetical to freedom; rather, freedom is the foundation of justice. As Nussbaum puts it, “The notion of *freedom to choose* is thus built into the notion of capability” (CC, 25). While Hirschmann equates the pursuit for justice with Nietzschean resentment, the capabilities approach is focused on the future— a decent political order must

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<sup>29</sup> Hirschmann, “Disability: A Question of Justice?,” 11.

continuously strive to ensure citizens at a threshold level of the abilities and options to: live a life of normal length, have good health, move freely from place to place and live with others, experience opportunities for sexual satisfaction, use one's senses, emotions, and reason to form a conception of the good, play, and influence one's own material and political environment (CC, 33-34). Hence, the distribution of goods— such as money, resources, and power— are not seen as ends in and of themselves, but instead as instruments that allow all people with a range of impairments, skills, and abilities to live free and fully human lives.

That said, Nussbaum's capabilities approach should be amended to integrate Kittay's insistence that we are all owed justice by virtue of the fact that we are "some mother's child" (LL, 23). The experience of disability instructs us to consider that it is not any essential characteristic or capability— rationality, the capacity for self-governance, etc.— that defines what it means to be human, or makes one eligible for political membership. Rather, our humanity is determined by virtue of our relationships with others. After all, is the meaning of humanity truly diminished by including in our ranks elders with severe dementia, or those living in a vegetative state? I think that more is lost by positioning them outside of our communities, since we deny them their human dignity, and also abandon and exploit the caregivers who arduously care for them and who will require care so long as they are living beings. What this means for the capabilities approach is that a just political society should provide the resources to allow all individual capabilities to flourish *without* requiring that disabled individuals achieve such capabilities in return. If someone does not live up to attaining any given capability,

it should not be considered a personal or political failure— the political community will have done its job, and acted justly.

## CHAPTER FOUR

### DEMOCRATIZING DISABILITY: THEORIZING DELIBERATIVE INCLUSION

Contemporary political theorists have focused considerable attention on the contours of what has generally come to be understood as “deliberative democracy.” Although there are many variations of deliberative democratic politics, proponents—including theorists as diverse as Jane Mansbridge, Jürgen Habermas, James Bohman, Seyla Benhabib, Iris Marion Young, and John Dryzek, among others—generally suppose that democracy is a political system that requires free and equal citizens to actively participate in public discussion about collective political concerns.<sup>1</sup> Indeed, for these thinkers, authentic deliberation—not merely voting and aggregating preferences—is the

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<sup>1</sup> See Jane Mansbridge, *Beyond Adversary Democracy* (New York: Basic Books, 1980). See also “Deliberative Democracy or Democratic Deliberation?,” in *Deliberation, Participation, and Democracy: Can the People Govern?*, ed. Shawn W. Rosenberg (New York: Palgrave Macmillan, 2008), 251-271; Jürgen Habermas, *Moral Consciousness and Communicative Action* (Cambridge: MIT Press, 1990). See also *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge: MIT Press, 1996); James Bohman, *Public Deliberation: Pluralism, Complexity, and Democracy* (Cambridge: MIT Press, 1996). See also James Bohman and William Rehg, eds., *Deliberative Democracy: Essays on Reason and Politics* (Cambridge: MIT Press, 1997); Seyla Benhabib, ed., *Democracy and Difference: Contesting the Boundaries of the Political* (Princeton: Princeton University Press, 1996); Iris Marion Young, “Difference as a Resource for Democratic Communication,” in *Deliberative Democracy: Essays on Reason and Politics*, eds. James Bohman and William Rehg (Cambridge: MIT Press, 1997), 400). See also “Asymmetrical Reciprocity: On Moral Respect, Wonder, and Enlarged Thought,” *Constellations* 3 (1997): 340-363; *Inclusion and Democracy* (Oxford: Oxford University Press, 2002); and John Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations* (Oxford: Oxford University Press, 2002).

primary source of political legitimacy, since the process of communication itself ideally transforms private preferences into an understanding of what is in the best interest of the political community at large. In addition, because they see democratic decisions as legitimate only if those affected by the decision are allowed to participate equally in deliberative decision-making, free from distortions of political power, they are particularly concerned with issues of inclusion and diversity.<sup>2</sup> Hence, deliberative democrats often theorize about how citizens should communicate across differences of race, gender, religion, nationality, ethnicity, sexual orientation, and age. Typical in her emphasis on inclusion and diversity is Nancy Fraser (1997), who defines democracy as “a process of communication across differences, where citizens participate in discussion and decision-making to determine collectively the conditions of their lives.”<sup>3</sup>

Within the field of disability studies, this theme of deliberative inclusion has been widely discussed as well, beginning when Jacobus tenBroek wrote the seminal essay “The Right to Live in the World” (1966), in which he called for the full and equal participation of people with disabilities in social and political life.<sup>4</sup> Especially since the

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<sup>2</sup> Iris Marion Young especially emphasizes the link between inclusion, deliberation, and political legitimacy in *Inclusion and Democracy* (2002). For more on the relationship between the political deliberation and political legitimacy, see Seyla Benhabib, “Toward a Deliberative Model of Democratic Legitimacy,” in *Democracy and Difference: Contesting the Boundaries of the Political*, ed. Seyla Benhabib (Princeton: Princeton University Press, 1996); Joshua Cohen, “Deliberation and Democratic Legitimacy,” in *Deliberative Democracy: Essays on Reason and Politics*, eds. James Bohman and William Rehg (Cambridge: MIT Press, 1997), 67- 92; Bernard Manin, “On Legitimacy and Political Deliberation,” *Political Theory* 15 (1987), 338-368.

<sup>3</sup> Nancy Fraser, *Justice Interruptus: Critical Reflections on the “Postsocialist” Condition* (New York: Routledge, 1997), 173.

<sup>4</sup> Jacobus tenBroek, “The Right to Live in the World: The Disabled in the Law of Torts,” *California Law Review* 54 (1966). Most recently, Stacy Clifford persuasively argued that including people with severe cognitive disabilities in democratic decision-making is integral to achieving social justice. See Stacy Clifford, “Making Disability Public in Deliberative Democracy,” *Contemporary Political Theory* 11 (2012): 211-228.



early 1990s, however, a small but growing body of critical literature in disability studies has begun to take up the theme of inclusive citizenship and its relationship to disability.<sup>5</sup> In addition, the goal of inclusion remains high on many disability activists' agenda. For example, the disability rights movement's widely adopted mantra "Nothing About Us Without Us" rejects paternalistic practices in favor of direct participation and autonomous decision-making.<sup>6</sup> Thus in both theory and practice, the goals of those concerned with issues of disability resonate with the insistence that no policy should be decided without the full deliberation of the groups affected by the decision.

Nevertheless, most mainstream theorizing about deliberative democracy has largely overlooked both the burgeoning literature in disability studies and the experiences of people with disabilities.<sup>7</sup> Relegated to the role of passive recipients of benevolent state policy or private charity, people with disabilities are rarely discussed as active citizens

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<sup>5</sup> See Len Barton, "The Struggle for Citizenship," *Disability, Handicap, and Society* 8 (1993): 235-248; Angharad E. Beckett, *Citizenship and Vulnerability: Disability and Issues of Social and Political Engagement* (New York: Palgrave Macmillan, 2006); Michael Bérubé, "Citizenship and Disability," *Dissent* 50 (2003): 52-57; Allison Carey, *On the Margins of Citizenship: Intellectual Disability and Civil Rights in Twentieth-Century America* (Philadelphia: Temple University Press, 2009); Helen Meekosha and Leanne Dowse, "Enabling Citizenship: Gender, Disability, and Citizenship in Australia," *Feminist Review* 57 (1997): 49-72.

<sup>6</sup> With reference to the mantra "Nothing About Us Without Us," James Charlton writes: "'Nothing About Us Without Us'... forces political-economic and cultural systems to incorporate people with disabilities into the decision-making process and recognize that the experiential knowledge of these people is pivotal in making decisions that affect their lives." James Charlton, *Nothing About Us Without Us: Disability Oppression and Empowerment* (Berkeley and Los Angeles: University of California Press, 1998), 17.

<sup>7</sup> As disability studies scholar Jenny Morris put it, "...Disabled people's perspective has been singularly absent from contemporary debates about citizenship... The very language of the debate often excludes people who have physical and/or sensory impairments, mental health problems or learning disabilities." In making the claim, Morris suggests that the meaning of key concepts relating to citizenship have been primarily understood from an "able-bodied perspective," and that these concepts take on new meanings when understood from the perspective of a person living with a disability. Jenny Morris, *Citizenship and Disabled People* (London: The Disability Rights Commission, 2005), 5.

with something to contribute to public deliberations about human affairs.<sup>8</sup> This essay seeks to open up the discussion, putting political theorists and disability scholars in conversation with one another about how and why we should fully include people with disabilities in democratic decision-making. After briefly analyzing the United States' history of disability exclusion, and examining how the American disability movement has responded to it, the essay argues that including people with disabilities in democratic decisions requires more than a commitment to civil rights. To make this case it turns to an examination of the writings of deliberative democrat Nancy Fraser. Using Fraser's concept of "participatory parity" as a proxy for inclusion, it considers additional prerequisites to democratic decision-making, specifically economic redistribution and cultural recognition, while also critically examining Fraser's framework in an effort to better understand the relationship she posits between inclusion, procedural justice, and deliberative outcomes. Ultimately, it argues that Fraser's substantive definition of political participation—which is firmly wedded to able-bodied norms of communication—must be amended to account for the experiences of people with disabilities, and it proposes a system of deliberation that relies on practices of translation in order to preserve communicative diversity and avoid discursive assimilation.

## I. A HISTORY OF EXCLUSION

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<sup>8</sup> For example, in *Political Liberalism*, John Rawls starts from the assumption that people with disabilities are generally passive citizens who do not have anything to contribute to political life. This foundational assumption justifies the exclusion of people with disabilities from his formulations on the original position: "Since we begin the idea of society as a fair system of cooperation, we assume that persons as citizens have all the capacities that enable them to be cooperating members of society... We do not mean to say, of course, that no one ever suffers from illness or accident... But given our aim, I put aside for the time being these temporary disabilities and also permanent disabilities or mental disorders so severe as to prevent people from being cooperating members of society in the usual sense." John Rawls, *Political Liberalism* (New York: Columbia University Press, 2005), 20.

Disabled Americans have historically been excluded from the basic rights and opportunities of citizenship in nearly every aspect of public and private life. *The Garrett History Brief* (2001)— an *amicus curiae* written by over one hundred historians and legal scholars—thoroughly documents the shameful history in the United States of people with disabilities being denied basic civil rights and opportunities. Americans with disabilities have been subject to state-mandated institutionalization, discrimination in zoning in public housing, forced sterilization, limitations on the right to marry and have children, disenfranchisement, exclusion from public schools, and more.<sup>9</sup> It is important to note that these prohibitions have differently affected people with disabilities depending on their age, gender, race, class, and type of impairment. Nevertheless, all have felt the sting of discrimination. As demonstrated by Martha Minnow (1990), the American legal system has established a dual track in which “competent” citizens have claimed rights and “incompetent” people (which included a range of cognitively and physically impaired individuals) have been granted protections and restrictions.<sup>10</sup>

From the 1960s onward, the American disability rights movement has worked to redress this disgraceful history of exclusion and injustice. The movement started from the foundational premise that discrimination on the basis of disability is no different in any moral or legal way from discrimination based on race or sex. To this point, the central aim of the disability rights movement has been to enshrine in law the same kind of anti-discrimination principle that has protected members of other historically marginalized groups. Thus its crowning achievement to date is the Americans with Disabilities Act

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<sup>9</sup> Center, Claudia, et. al., “The Garrett History Brief,” *Journal of Disability Policy Studies* 12 (2001): 70-78.

<sup>10</sup> Martha Minow, *Making all the Difference: Inclusion, Exclusion and American Law* (Ithaca and London: Cornell University Press, 1990).

(ADA), passed in 1990, which prohibits disability discrimination in the realms of employment, public services, and telecommunications. The legislation granted people with disabilities formal political equality, specifically equal protection under the law. Yet taking cues from the social model of disability, the Act's "reasonable accommodation" clause also provided people with disabilities the positive right to demand changes from others (usually their employers, so long as the costs of accommodation did not pose an "undue hardship"), including making existing facilities readily accessible, modifying work schedules, acquiring equipment, etc.<sup>11</sup> In describing the primary intent of the legislation, disability scholars Robert Baird, Stuart Rosenbaum, and Kay Toombs explain that "just as the Emancipation Proclamation freed slaves, officially giving them the rights of citizens enumerated in the Constitution, the Americans with Disabilities Act of 1990 sought to bring disabled citizens into equality with their normally abled peers."<sup>12</sup>

Largely due to this landmark civil rights legislation, Americans with a range of physical, cognitive, and psycho-emotional impairments now enjoy an unprecedented degree of opportunity to participate in our society. However, it would be misleading to suggest that people with disabilities have been fully included in American life. Although President George H. W. Bush called for "the shameful walls of exclusion" to come tumbling down when he signed the ADA, these walls have not exactly crumbled. Citizens with disabilities continue to have lower levels of political participation than nondisabled citizens of similar demographic characteristics. For instance, in the 2008 presidential

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<sup>11</sup> For more on the social model of disability see Michael Oliver, *The Politics of Disablement* (London: Macmillan, 1990); Tom Shakespeare, "The Social Model of Disability," in *The Disability Studies Reader*, ed. Lennard Davis (New York: Routledge, 2006).

<sup>12</sup> Robert Baird, Stuart Rosenbaum, and Kay Toombs, *Disability: The Social, Political and Ethical Debate* (Amherst: Prometheus Books, 2009), 16.

election voting rates among people with disabilities were on average 7 percentage points lower than those of nondisabled Americans, with especially low turnout among citizens with motor impairments.<sup>13</sup> In addition, people with disabilities also disproportionately experience high levels of unemployment. According to the American Community Survey (ACS) of the U.S. Census Bureau, 46 percent of working-age people with at least one disability were employed in 2005, compared with 84 percent of nondisabled people.<sup>14</sup> Such persistent marginalization raises difficult questions for political theorists and political activists committed to inclusion. If people with disabilities have formal rights to inclusion and non-discrimination (as guaranteed by the ADA), what kinds of structural barriers continue to prevent them from participating in society? What does full inclusion require? Thinking more broadly, why should we, as citizens of a democracy, value their inclusion?

## II. *SHIFTING THE FOCUS FROM CIVIL RIGHTS TO SOCIAL RIGHTS: PARTICIPATORY PARITY AND INCLUSION*

In *Unruly Practices: Power, Discourse and Gender in Contemporary Social Theory* (1989), political theorist Nancy Fraser makes an analytic distinction between formal civil rights (such as the right to free speech) and social rights (such as the right to an adequate standard of living), arguing that the exercise of the former is intimately tied

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<sup>13</sup> Lisa Schur and Douglas Kruse, *Fact Sheet: Disability and Voter Turnout in the 2008 Elections* (New Brunswick: School of Management and Labor Relations, Rutgers University, 2008). See also Lisa Schur and Douglas Kruse, "What Determines Voter Turnout? Lessons from Citizens with Disabilities," *Social Science Quarterly* 81 (2000): 571-587; Lisa Schur et. al., "Enabling Democracy: Disability and Voter Turnout," *Political Research Quarterly* 55 (2002): 167-190; Todd Shields et. al., "The Disability Voice in American Politics: Political Participation of People with Disabilities in the 1994 Election," *Journal of Disability Policy Studies* 9 (1998): 33-52.

<sup>14</sup> Matthew Brault, "Americans With Disabilities: 2005" (U.S. Census Bureau, December 2008): <http://www.census.gov/prod/2008pubs/p70-117.pdf>. See also David Stapleton et. al., "Dismantling the Poverty Trap: Disability Policy for the Twenty-First Century," *The Milbank Quarterly* 81 (2006): 701-732.

to the practical provision of the latter. Fraser does not conceive of civil rights as inherently antithetical to social rights. Rather, she insists that “there can be no democratic citizenship without social rights,” assuming that a certain threshold of social equality is necessary for the effective exercise of any rights at all.<sup>15</sup> In her words,

It is true, as some Marxists and others have claimed, that classical liberal rights to free expression, assembly, and the like are ‘merely formal.’ But this says more about the social context in which they are currently embedded than about their ‘intrinsic’ character, for, in a context devoid of poverty, inequality, and oppression, formal liberal rights could be broadened and transformed into substantive rights...<sup>16</sup>

Given this line of argument, Fraser would recognize that a person with a disability may be legally guaranteed the formal right to freedom of speech, but if positive measures are not taken—if the person cannot afford the transportation costs to get to the meeting, or the debate takes place in a building that has no access ramps or elevators, or the event does not provide American Sign Language interpreters, or the handouts at the debate are not available in Braille— then freedom of speech is more an empty political gesture than a substantive right.<sup>17</sup>

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<sup>15</sup> Nancy Fraser and Linda Gordon, “Contract versus Charity: Why is there no Social Citizenship in the United States?” in *The Citizenship Debates: A Reader*, ed. Gershon Shafir (Minneapolis: University of Minnesota Press, 1998), 126.

<sup>16</sup> Nancy Fraser, *Unruly Practices: Power, Discourse and Gender in Contemporary Social Theory* (Minneapolis: University of Minnesota Press, 1989), 183.

<sup>17</sup> To a certain extent, the ADA recognizes the relationship between social rights and the exercise of formal civil rights by requiring employers and service providers to make “reasonable accommodations” for disabled people, unless the modifications would “fundamentally alter the nature of the services” or impose an “undue burden” on the employer. However, legal scholars and disability theorists continue to debate whether or not the “undue burden” proviso undermines the provision of social entitlements. After all, the ADA neither provides cash assistance, nor does it guarantee fundamental modifications to the workplace. Moreover, the anti-discrimination law is limited in its scope— it is possible that some social rights are cultural, and cannot be guaranteed through legal measures. For opposing views see Anita Silvers, “Formal Justice,” in *Disability, Difference, Discrimination*, eds. Anita Silvers, David Wasserman, and Mary Mahowald (New York: Rowman and Littlefield Publishers, 1998); and, Patricia Illingworth and Wendy Parmet, “Positively Disabled: The Relationship between the Definition of Disability and Rights Under the ADA,” in *Americans with Disabilities: Exploring Implications of Law for Individuals and Institutions*, eds. Leslie Pickering Francis and Anita Silvers (New York: Routledge, 2000).

Indeed, the link between civil and social rights informs Fraser's later work on "participatory parity," in which she persuasively argues that legal citizenship status alone is not enough to ensure democracy's inclusionary promise. Whereas Jürgen Habermas's theory of the public sphere requires *bracketing* inequalities of status and proceeding with deliberation *as if* they do not exist, Fraser is concerned that unequal social and cultural positioning due to racism, sexism, heterosexism, and classism (I would add ableism) creates informal barriers to inclusion by unfairly influencing what issues are considered appropriate for public debate, when and where decision-making should occur, and who is taken seriously within deliberations.<sup>18</sup> Put differently, she argues that nominal inclusion in decision-making is not enough because even in processes of deliberation, inequalities in social status advantage dominant groups and disadvantage subordinate ones. She writes,

Discursive interaction within the bourgeois public sphere was governed by protocols of style and decorum that were themselves markers of status inequality. These functioned informally to marginalize women, people of color, and members of the plebeian classes and to prevent them from participating as peers. Here we are talking about informal impediments to participatory parity that can persist even after everyone is formally and legally licensed to participate... Social inequalities can infect deliberation, even in the absence of any formal exclusions.<sup>19</sup>

In short, Fraser argues, "the lifting of formal restrictions on public sphere participation does not suffice to ensure inclusion in practice."<sup>20</sup>

The implication of the analysis is clear: because it is impossible to insulate political processes from social and cultural injustice, democratic states must intervene in

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<sup>18</sup> Nancy Fraser, "Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy," *Social Text* 25/26 (1990): 73.

<sup>19</sup> Fraser, *Justice Interruptus*, 78.

<sup>20</sup> Fraser, *Justice Interruptus*, 88.

the social realm, providing positive social rights in order to ensure that citizens are able to participate with fellow citizens. Fraser uses the term “participatory parity” as a way to describe the provision of these positive rights, defining the term as the just allocation of “the social arrangements that permit (adult) members of society to interact with one another as peers.”<sup>21</sup> Upon closer examination, the concept of participatory parity does double duty in Fraser’s framework, in that it serves as both the metric to assess the procedural fairness of dialogical processes and also as a means to evaluate the substantive justice of deliberative outcomes.<sup>22</sup> Put differently, Fraser employs participatory parity as a conceptual framework not only to determine whether or not the process of participation is fair, but also to evaluate whether or not the deliberative outcomes further reinforce commitments to social justice. Writing in “Identity, Exclusion, and Critique: A Response to Four Critics” (2007), she explains:

The principle of participatory parity is at once procedural and substantive. Applied to both the input and the output of deliberation, that principle serves to evaluate each of two major variables in the equation. First, it assesses the procedural fairness of dialogical processes— by interrogating the relations of social power that underlie them. Second, it also serves to assess the substantive justice of deliberative outcomes— by examining their consequences for future social interaction.<sup>23</sup>

In the case of disability, the concept of participatory parity raises important questions:

what kinds of prerequisites are necessary for procedural participatory parity to be

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<sup>21</sup> Nancy Fraser, “Recognition without Ethics?,” *Theory, Culture and Society* 18 (2001): 29.

<sup>22</sup> In response to criticism, Fraser acknowledges the circularity of her logic: “My double use of participatory parity to evaluate both the input and the output of political argument raises the question of circularity. On the one hand, what exactly is needed to achieve parity of participation in a given case can only be determined dialogically, through fair democratic deliberation. On the other hand, fair democratic deliberation presupposes that participatory parity already exists. There is indeed a circularity here.” Nancy Fraser, “Identity, Exclusion, and Critique: A Response to Four Critics,” *European Journal of Political Theory* 6 (2007): 331.

<sup>23</sup> Nancy Fraser, “Identity, Exclusion, and Critique,” 330-331.



realized? What does participating as a peer actually look like in practice? And, most important, can people with disabilities actually be accommodated into Fraser's model?

### III. PREREQUISITES FOR PROCEDURAL PARITY I: REDISTRIBUTION

To begin, Fraser argues that because economic inequality undermines an individual's capacity to participate on par with her peers, some measure of economic redistribution is a necessary precondition for procedural participatory parity. When relations of production in capitalist economic markets are predicated upon the structural exploitation and marginalization of particular social groups, this asymmetry denies these citizens the means— income, property ownership, health care, education, social capital, caloric intake, leisure time— to participate on equal grounds in civil and political life. The idea that some measure of economic equality is a necessary condition for meaningful inclusion in political life is not new, and Fraser acknowledges that her argument is indebted to Marx's theory of capitalist exploitation, John Rawls's account of justice as fairness in the distribution of "primary goods," and Ronald Dworkin's view that justice requires citizens to have "equality of resources," among other sources.<sup>24</sup> Nonetheless, she gives the argument a distinctively discursive character:

The distribution of material resources must be such as to ensure participants' independence and "voice." This I shall call the *objective condition* of participatory parity. It precludes forms and levels of economic dependence and inequality that impede parity of participation. Precluded, therefore, are social arrangements that institutionalize deprivation, exploitation, and gross inequalities in wealth, income, and

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<sup>24</sup> Nancy Fraser, "From Redistribution to Recognition? Dilemmas of Justice in a 'Post-Socialist Age'," in *Feminism and Politics*, ed. Anne Phillips (Oxford: Oxford University Press, 1998).

leisure time, thereby denying some people the means and opportunities to interact with others as peers.<sup>25</sup>

Hence Fraser recommends that a variety of redistributive measures be taken in order to alleviate these asymmetries. Depending on context, she suggests that remedies for socioeconomic injustice might include any of the following: redistributing income and/or wealth, reorganizing the division of labor, changing the structure of property ownership, democratizing the procedures by which investment decisions are made, and/or transforming other basic economic structures.<sup>26</sup> Elsewhere, she distinguishes between affirmative and transformative remedies, suggesting that affirmative strategies for redressing maldistribution “aim to correct inequitable outcomes without disturbing the underlying social structures that generate them,” while transformative strategies “aim to correct unjust outcomes precisely by restructuring the underlying generative framework.”<sup>27</sup> Put differently, affirmative strategies (such as cash assistance) tend to target end-state outcomes, while transformative measures (such as reorganizing the division of labor) are aimed at the roots causes of structural inequality. Fraser suggests that while transformative strategies are more preferable in principle because they demand solidarity and do not create stigmatized classes of beneficiaries, they are highly vulnerable in practice to collective action problems because such measures are often met with resistance by those who benefit from the status quo. Moreover, she allows that affirmative programs can have transformative effects if they are consistently pursued.

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<sup>25</sup> Nancy Fraser and Axel Honneth, *Redistribution or Recognition? A Philosophical Exchange* (London: Verso Books, 2003), 36.

<sup>26</sup> Nancy Fraser and Axel Honneth, *Redistribution or Recognition?*, 13.

<sup>27</sup> Nancy Fraser, *Redistribution or Recognition?*, 74-77.

Because both affirmative and transformative remedies have their respective benefits and drawbacks, she supports a multifaceted approach to redistribution.

Unquestionably, marginalization within the capitalist system and high unemployment rates contribute to the fact that people with disabilities disproportionately live under the poverty level. According to the U.S. Census Bureau, in 2010 the proportion of those aged 18-64 with a disability who fell under the poverty line was 27.9 percent. In contrast, 12.5 percent of people aged 18-64 without a disability fell under the poverty line. In other words, those with at least one disability were more than *twice* as likely to live in poverty.<sup>28</sup> Many contemporary disability policies have been designed to offset the exclusion of the disabled from the workforce and hence from their ensuing poverty. For example, policies such as the Ticket to Work and Work Incentives Improvement Act (1999) were passed on the grounds that investing resources to include people with disabilities in the workforce— through job training, vocational rehabilitation, job placement and career counseling— would save money in the long run, since wages could (at least partially) replace Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) payments.

In addition, when wage labor is not possible, many people with disabilities are eligible to receive provisions or cash assistance through various state and federal entitlement programs. For those who qualify, Medicare and Medicaid have helped shoulder the economic burden of many impairment related health care costs. With the passage of the Individuals with Disabilities Education Act (IDEA) in 1990, children with disabilities are provided the funds for a “free and appropriate education” in “the least

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<sup>28</sup> Carmen DeNava, Bernadette D. Proctor, Jessica C. Smith, *Income, Poverty, and Health Insurance Coverage in the United States: 2010* (Washington D.C.: U.S. Census Bureau, 2011), 18.

restrictive environment.” In addition, The Rehabilitation Act of 1973 supports the Vocational Rehabilitation Program, which assists states in providing discretionary funding for disabled people to live in Centers for Independent Living. Perhaps most notably, SSDI and SSI programs have provided cash assistance to millions of Americans.<sup>29</sup> However, these scattered entitlement programs have not been enough to lift most unemployed people with disabilities over the poverty line. As of 2006, the maximum federal SSI benefit was only about 75 percent of the federal poverty standard for an individual—in many areas of the country a maximum monthly SSI benefit could not even cover the cost of housing.<sup>30</sup>

In applying Fraser’s framework to the contemporary landscape, it is easy to discern that poverty continues to inhibit many people with disabilities from participating on equal grounds with nondisabled citizens. Persistent poverty means that many with disabilities can barely afford the basic necessities for human subsistence, much less the personal care, medicines, and technological aids they may need to live decent lives outside of institutions. Additional workforce restructuring to enable people with limited work capacities to contribute to their own financial support, along with more generous entitlements and cash assistance programs for those who cannot engage in wage labor, could go a long way to ensure that disabled citizens have the opportunities and resources necessary to effectively exercise their civil rights. Moreover, the current patchwork of state and federal disability programs creates pervasive inefficiencies and gaps in services,

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<sup>29</sup> SSDI is a contributory insurance program, meaning that it benefits workers who have contributed to the Social Security Trust Fund and become disabled before retirement age, whereas SSI is a means-tested, federally administered cash assistance program for individuals who are aged, blind, or disabled.

<sup>30</sup> David Stapleton et. al., “Dismantling the Poverty Trap,” 703-704.

so policy consolidation and coordination may be necessary to effectively administer these redistributive measures.

#### IV. *PREREQUISITES FOR PROCEDURAL PARITY II: RECOGNITION*

Yet redistribution is not enough, for Fraser also argues that degrading cultural stereotypes also undermine any possibility of participatory parity. Thus the second precondition for participation is what Fraser calls the “intersubjective condition,” or some form of cultural recognition. In her words,

The second condition requires that institutionalized patterns of cultural value express equal respect for all participants and ensure equal opportunity for achieving social esteem...It precludes institutionalized norms that depreciate some categories of people and the qualities associated with them...whether by burdening them with excessive ascribed ‘difference’ or by failing to acknowledge their distinctiveness.<sup>31</sup>

In this case, the social construction and dissemination of degrading cultural representations is considered a barrier to inclusion. Here the remedy for injustice is cultural or symbolic, and could involve any of Fraser’s following prescriptions: upwardly revaluing disrespected identities and the cultural products of maligned groups; recognizing and positively valorizing cultural diversity; or transforming the wholesale societal patterns of representation, interpretation, and communication in ways that would change everyone’s social identity.<sup>32</sup> From Fraser’s point of view, political recognition is not a one-size-fits-all remedy—the appropriate response to structural cultural devaluation is contextually specific.

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<sup>31</sup> Fraser, “Recognition without Ethics?,” 29.

<sup>32</sup> Nancy Fraser, *Redistribution or Recognition?*, 13.

A prominent narrative in democratic theory has been the idea that inclusive citizenship is as much about recognition as it is about access to formal rights or entitlements. Political theorists, especially feminist theorists and proponents of multiculturalism, have focused on how socially perpetuated stigmas have prevented marginalized persons from achieving participatory parity in the public sphere.<sup>33</sup>

Disability scholars have much to add to this growing body of literature. In *Extraordinary Bodies: Figuring Physical Disability in American Culture and Literature* (1997) literary scholar Rosemarie Garland-Thomson analyzes the social construction and dissemination of cultural tropes about disability in two sites of disabled identity production in the history of American culture— sentimental fiction and the freak show. Garland-Thomson shows how early-nineteenth-century sentimental fiction deployed disabled figures as Romantic icons of tragedy and pity in an effort to invoke support for humanitarian sociopolitical reforms, while American freak shows of the late-nineteenth and early-twentieth centuries would portray the disabled body as grotesque and monstrous in order to confirm and verify the normality of the onlookers.<sup>34</sup> Similar stereotypes about disabled people as tragic “cripples” and abnormal “freaks” persist today. Thus, charity posters still sentimentalize disabled children who seemingly cry out for help from benevolent

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<sup>33</sup> For example, Patricia Hill Collins explains how negative stereotypes of black women as mammies, matriarchs, welfare queens, and jezebels are used to perpetuate and justify black women’s oppression as well as limit black women’s capacity for self-definition and political action. Patricia Collins, *Black Feminist Thought*, Second Edition (New York: Routledge, 2000), 71-96. Glenn Loury also makes the case that racial stigma inhibits the ability of African-Americans to realize their full human potential and act freely. Glenn Loury, *The Anatomy of Racial Inequality* (Cambridge: Harvard University Press, 2002).

<sup>34</sup> Garland-Thomson primarily analyzes Harriet Beecher Stowe’s *Uncle Tom’s Cabin* (1852), Rebecca Harding Davis’ *Life in the Iron Mills* (1861), and Elizabeth Stuart Phelps’s *The Silent Partner* (1871). Rosemarie Garland-Thomson, *Extraordinary Bodies: Figuring Physical Disability in American Culture and Literature* (New York: Columbia University Press, 1997).

nondisabled citizens, while people with dwarfism continue to be cast as spectacles in popular media.<sup>35</sup>

What is important for deliberative democrats to consider is Garland-Thomson's insistence that these stereotypes infect political deliberation. Interactions between nondisabled and disabled strangers tend to be strained because nondisabled people often exhibit fear, pity, fascination, revulsion, or any combination of the above when faced with people with visible disabilities (especially if the nondisabled person is unaccustomed to spending time with disabled people and merely takes cues from popular stereotypes). Conversely, these kinds of encounters often make people with disabilities anxious, sad, and/or angry. The ever-present threat of being rejected, ridiculed, stared at, or patronized is mentally and emotionally taxing. People with disabilities must learn to navigate their imposed identities in a variety of ways—through charm, humor, anti-social isolation, deference, or “passing”—in order to make themselves and their nondisabled peers more comfortable.<sup>36</sup> These interpersonal dynamics need not be dismissed as apolitical individualism or relegated to the field of psychological studies. On the contrary, pejorative stereotypes directly impact democratic participation.

For example, Jürgen Habermas, arguably the most influential contemporary theorist of deliberative democracy, reflects on how social reactions to his cleft palate and speech impediment limited his political voice and participation. The difficulty he

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<sup>35</sup> Scholars have written extensively about representations of people with mental and physical impairments in popular media. See Jack Nelson ed., *The Disabled, The Media, and the Information Age* (Westport: Greenwood Press, 1994); Paul Longmore, *Why I Burned My Book and Other Essays on Disability* (Philadelphia: Temple University Press, 2003), 119-48.

<sup>36</sup> For further discussion of disabled people's negotiation of intersubjective interactions see Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity* (New York: Simon and Schuster, Inc., 1963); Tobin Siebers, “Disability as Masquerade,” in *Disability Theory* (Ann Arbor: University of Michigan Press, 2004).

encountered from his classmates when trying to speak in class dissuaded him from speaking in public: “My speech impediment may...explain why I have always been convinced of the superiority of the written word over the spoken. The written form disguises the stigma of the spoken... To this very day and to the disadvantage of my listeners, I still shy away from speaking off the cuff in public.”<sup>37</sup> Personal narratives from within the field of disability studies echo Habermas’s experience and expose how American society exhibits discriminatory attitudes towards people with visible and audible disabilities.<sup>38</sup>

Beginning with the publication of Charles Taylor’s seminal essay “The Politics of Recognition” (1992), theorists of recognition have applied the concept to redress the perpetuation of degrading cultural representations.<sup>39</sup> Fraser is critical of traditional formulations of recognition, like Taylor’s, on the grounds that identity politics displace struggles for redistribution and essentialize identity.<sup>40</sup> Moving from an “identity model” of recognition to what she calls a “status model” of recognition, she argues that to be misrecognized is “to be denied the status of a full partner in social interaction, as a consequence of institutionalized patterns of cultural value that constitute one as

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<sup>37</sup> Jürgen Habermas, “Public Space and Political Public Sphere- The Biographical Roots of My Two Motifs of Thought,” in *Commemorative Lecture* (Kyoto: Inamori Foundation, 2004).

<sup>38</sup> See Susannah Mintz, *Unruly Bodies: Life Writing by Women with Disabilities* (Chapel Hill: The University of North Carolina Press, 2007), 53-70.

<sup>39</sup> Following Taylor’s lead, disability scholars like Anita Silvers and Sarah Goering have recently turned to the recognition literature in an attempt to ameliorate the inequalities wrought by the construction and dissemination of negative stereotypes about disability. See Anita Silvers, “Protection or Privilege? Reasonable Accommodation, Reverse Discrimination, and the Fair Costs of Repairing Recognition for Disabled People in the Workforce,” *The Journal of Gender, Race, and Justice* 8 (2005): 561-594; and, Sarah Goering, “‘Mental Illness’ and Justice as Recognition,” *Philosophy and Public Policy Quarterly* 29 (2009): 14-18.

<sup>40</sup> Nancy Fraser, “Rethinking Recognition,” *New Left Review* 3 (2000): 107-120.



comparatively unworthy of respect or esteem."<sup>41</sup> Subsequently, redressing misrecognition is not simply about creating positive, self-affirming cultural representations; it also involves replacing institutionalized value patterns that impede parity of participation with ones that enable or foster it.<sup>42</sup> In other words, cultural representations are not free floating artifices for Fraser, but are instead the byproduct of specific socio-historical material conditions and policies. For example, historian Susan Schweik describes how the turn-of-the-century "ugly laws," ordinances passed in many American cities which made it illegal for persons with "unsightly or disgusting" disabilities to appear in public, misrecognized those with disabilities by structurally signaling that disabled people's bodies are somehow unacceptable and that those with disabilities are not welcome in public spaces.<sup>43</sup> Redressing misrecognition, in this case, required changing those institutionalized value patterns by repealing discriminatory laws and creating policies to accommodate those with disabilities in public spaces, thereby signaling that their presence was valued within the political community.

To date, there are multiple variations of recognition politics, and the differences between various formulations on recognition are not particularly important for the analysis at hand. What is worth repeating, however, is Fraser's insistence that members of marginalized groups are barraged with denigrating cultural representations that negatively impact their participation in public deliberations. A range of theoretical

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<sup>41</sup> Fraser, "Rethinking Recognition," 114-115.

<sup>42</sup> In the case of disability, Fraser might support the Individuals with Disabilities Education Act's requirement to provide every child a "free and appropriate education" in the "least restrictive environment," since restructuring schools so that all students can learn together might de-stigmatize the label of needing "special education."

<sup>43</sup> For more on the ugly laws, see Susan M. Schweik, *The Ugly Laws: Disability in Public* (New York: New York University Press, 2009).

formulations throughout the Western canon highlight this problem. Whether it is W.E.B. Du Bois' theory that racial inequalities produce an experience of "double consciousness" which undermines African-Americans' confident action in the world, or Iris Marion Young's theory that women's internalization of feminine ideals of passivity and weakness results in women "throwing like a girl," or even Erving Goffman's insight that the able-bodied expectation for "the cripple to be crippled" compels people with disabilities to act the part of the pitiable, weak, and childlike cripple, one thing seems clear: a vision of citizenship that fully includes people with disabilities must counter social constructions that stigmatize them and deny their personhood.<sup>44</sup>

#### V. SUBSTANTIVE DEFINITION OF PARTICIPATORY PARITY

But what does participating as a peer actually look like in practice? And, perhaps more importantly, who gets to decide what it means to participate as a peer? More often than not, Fraser writes as if we already know what participatory parity means. In the article "Identity, Exclusion, and Critique" (2007), she clearly explains that her definition of participation moves beyond a traditional liberal focus on voting, stating that "the norm of parity of participation applies broadly, across all major arenas of social interaction, including family and personal life, employment and markets, formal and informal politics, and voluntary associations in civil society."<sup>45</sup> Yet beyond this expansive view about the spheres in which political participation occurs, she provides strikingly little

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<sup>44</sup> W.E.B. Du Bois, *The Souls of Black Folk* (Cambridge: A.C. McClurg and Company, 1903), 3-4; Iris Marion Young, *On Female Body Experience: "Throwing Like a Girl" and Other Essays* (Oxford: Oxford University Press, 2005), 42-45; Goffman, *Stigma*, 110.

<sup>45</sup> Nancy Fraser, "Identity, Exclusion, and Critique," 315.

detail about what she considers to be legitimate modes of participation. Responding to scholars who have criticized her for avoiding direct substantive descriptions, Fraser is unrepentant. “Assuming that arenas of participation and types of interaction are historically variable and open-ended,” she writes, “I do not seek to enumerate once and for all a list of basic capabilities or functionings.”<sup>46</sup>

That said, some of Fraser’s arguments about political participation within deliberative democracies indicate that she conflates verbal communication with political participation. A staunch proponent of multiculturalism, she works diligently to remedy the fact that dominant groups have a privileged relation to what she calls “the socio-cultural means of interpretation and communication,” including recognized vocabularies, established narrative conventions, the repertoire of rhetorical devices, and the bodily and gestural dimensions of speech.<sup>47</sup> She studiously avoids requiring discursive assimilation as a condition for inclusion, suggesting that it “would be the demise of multiculturalism.”<sup>48</sup> Moreover, in valuing inclusion over intelligibility, she insists that social equality and linguistic diversity can coexist. Even though communication across lines of cultural and linguistic difference may be difficult, and may require that all citizens acquire “multicultural literacy,” she thinks that the benefits of universal inclusion far outweigh the difficulties we may face communicating with each other across differences.<sup>49</sup> Yet the problem, as seen from a disability perspective, is that while Fraser is a proponent of linguistic diversity, she nonetheless presumes that participants will at a

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<sup>46</sup> Fraser, “Identity, Exclusion, and Critique,” 319.

<sup>47</sup> Nancy Fraser, “Toward a Discourse Ethic of Solidarity,” *Praxis International* 5 (1986): 425.

<sup>48</sup> Fraser, *Justice Interruptus*, 84.

<sup>49</sup> Fraser, *Justice Interruptus*, 84.

minimum be able to comply with certain expressive norms, namely the ability to speak in a way that is easily intelligible for citizens who can hear. Indeed, in *Justice Interruptus* (1997), Fraser goes so far as to say that “*participation means being able to speak ‘in one’s own voice,’ thereby simultaneously constructing and expressing one’s cultural identity through idiom and style.*”<sup>50</sup>

But what about members of our political community who cannot speak, or those who communicate linguistically in alternative ways? Are they not welcome at the political table? Under Fraser’s definition, it seems that if many people with disabilities want to communicate with those in power, they will have to conform to ableist norms. The price of normalization is particularly unfair for linguistically impaired individuals who can never hope to be equal on these terms. Hence, attention to communicative diversity requires moving beyond thinking in terms of multiple ethnic identities to also include people with disabilities. While it is surprising that Fraser does not address disability as a group identity, I presume that she would be amenable to this modification for the preservation of multiculturalism. Thus, if we consider the experiences of people with disabilities, or better yet allow them to directly represent themselves and convey what participatory parity means to them in a medium of their choosing, we might achieve a more expansive and accurate understanding of what democratic participation is in a truly deliberative democracy.

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<sup>50</sup> Fraser, *Justice Interruptus*, 83. Likewise, in “Politics, Culture, and Public Sphere” (1995) she implicitly endorses a Habermasian conception of political participation, stating that “the idea of the public sphere...designates a theatre in modern societies in which *political participation is enacted through the medium of talk.*” Nancy Fraser, “Politics, Culture, and Public Sphere: Toward a Postmodern Conception” in *Social Postmodernism: Beyond Identity Politics*, eds. Linda Nicholson and Steven Seidman (Cambridge: Cambridge University Press, 1995), 287, *emphasis added*.

## VI. BEYOND FRASER: EXPANDING COMMUNICATION NORMS

Political communication takes many forms, and it is a far messier enterprise than most deliberative democrats are willing to accept. This reality is especially apparent from a disability perspective. People with diagnosed speech and language disorders— such as aphasia, dysarthria, and dysphonia—may slur, stutter, lisp, or experience the complete inability to speak or use language at all. Language disorders often result from mental retardation, autism, cleft palate, and other congenital conditions. People also acquire disorders of language because of stroke, head injury, dementia, and brain tumors. People with hearing impairments encounter difficulties communicating through verbal language as well. One might assume that these experiences only pertain to a small subset of the population, yet The National Institute on Deafness and Other Communication Disorders (NIDCD) estimates that approximately 7.5 million people in the United States have trouble using their voices. In fact, the NIDCD estimates that approximately one in six Americans will experience a communication disorder in their lifetime.<sup>51</sup>

In light of the prevalence of language and speech related disabilities, deliberative democrats need to reassess the perceived need to enforce communicative norms in the interest of political efficacy, especially since it may come at the high cost of forced normalization or exclusion. Many members of the disability community are unwilling to accept this tradeoff. Indeed, proponents of a vibrant disability culture have alerted us to the possibility that disability is simply “another way of being,” not a personal tragedy to overcome. Yet trying to convince nondisabled people that disability is a difference worth preserving is no easy task. Disability has long been associated with deviancy,

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<sup>51</sup> “Statistics on Voice, Speech, and Language,” *National Institute on Deafness and Other Communication Disorders*, last modified June 7, 2010: <http://www.nidcd.nih.gov/health/statistics/pages/vsl.aspx>.

abnormality, and pathology, and in mainstream society it is not usually valued as an element of human diversity. Many scholars in disability studies have challenged these dominant views, arguing that “we should value and accommodate disability as a form of human diversity” because “disability is integral to being human.”<sup>52</sup> For example, some members of the deaf community do not want to be assimilated into a “hearing” and/or “oralist” society where they are forced to communicate like “normal” citizens. This perspective comes to the forefront in discussions about cochlear implants, and critics contend that the deaf body should not be “fixed” to conform to dominant norms of communication, but instead that the larger community should recognize American Sign Language (ASL) as a legitimate and valuable form of communication.<sup>53</sup>

Similarly, recent ethnographic work has also revealed that people with autism are often excluded from public deliberations due to rigid definitions of legitimate communication. Sociologist Pamela Fisher (2007), who conducted in-depth interviews of parents of children on the spectrum of autism, describes the situation. One parent, named Lesley, talked about her experiences living with her three year old son Ben. While speech therapists and doctors insisted that Lesley should not “pander to Ben’s whims” and should instead encourage Ben to converse using “normal” modes of communication, Lesley found that Ben could better communicate on his own terms. When talking with Fisher, Lesley provided numerous examples of Ben’s communicative inventiveness, such as flapping his arms to convey pleasure at seeing someone he loved, or hiding the book

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<sup>52</sup> Rosemarie Garland-Thomson, “Welcoming The Unbidden: The Case for Conserving Human Biodiversity,” in *What Democracy Looks Like*, eds. Amy Schrager Lang and Cecilia Tichi (New Brunswick: Rutgers University Press, 2006), 83-84.

<sup>53</sup> See Jane Campbell and Michael Oliver, *Disability Politics: Understanding Our Past, Changing Our Future* (London: Routledge, 1996), 120-121.

he checked out from library if he wanted to keep it for another day. Lesley does not view her son's autism as some sort of deficiency, but as "a different way of being." As Pamela Fisher points out, Lesley's perspective resonates with many members of the autistic community and their allies, who understand autism in terms of neurodiversity rather than deficiency.<sup>54</sup> While many mistakenly assume that the political problem resides in the autistic individual's inability to be expressive, Ari Ne'eman, President and co-founder of the Autistic Self Advocacy Network (ASAN), suggests that the problem resides in "the failure of society to understand the communication styles of autistics."<sup>55</sup>

People with severe and profound cognitive disabilities and mental retardation pose further challenges to conventional models of political communication. Philosopher Eva Kittay (2001) has written extensively about the limitations of liberal conceptions of citizenship in this regard. Political theorists such as Linda Alcoff have provided some excellent reasons to criticize the practice of speaking for others, arguing that advocacy for the oppressed must come to be done principally by the oppressed themselves, since systematic divergences in social location between speakers and those being spoken for may affect the content of what is said to the disadvantage of the oppressed.<sup>56</sup> However, Kittay notes that speaking for oneself is not always possible, and that effective communication may require collaboration or advocacy. In her words,

Liberalism invokes a notion of political participation in which one makes one's voice heard... [Yet] those who cannot speak must depend on others to speak for them... To be heard, to be recognized, to have her needs and

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<sup>54</sup> Pamela Fisher, "Experiential Knowledge Challenges 'Normality' and Individualized Citizenship: Towards 'Another Way of Being,'" *Disability and Society* 22 (2007): 290-291.

<sup>55</sup> Andrew Solomon, "The Autism Rights Movement" in *New York Magazine* (2008): <http://nymag.com/news/features/47225/>.

<sup>56</sup> See Linda Martin Alcoff, "The Problem of Speaking for Others," *Cultural Critique* 20: 5-32.

wants reckoned along with those of others, the mentally retarded individual requires an advocate— a role that has voice at its center.<sup>57</sup>

Kittay is the mother of Sesha, a woman with multiple severe impairments. Writing in her essay “At Home with My Daughter” (2000), she explains that even though Sesha cannot speak for herself in a verbal idiom or style congruent with accepted norms, Sesha’s presence in the community nonetheless communicates invaluable lessons:

She [Sesha] will never become “independent.” She will never become a “productive member of society.” She will never contribute to her own support, much less become self-supporting. Sesha will be a “burden” on any economic order. But Sesha’s being in the world is an inestimable contribution— even in the face of all the care and resources she requires. She is a most gentle tutor. She instructs us in the beauty of life itself. Her right to be in the world is not the bread she earns but the joy she brings. Her right to be in the world is not earned by her rationality but by her example that reason is not what defines what is human. Shut off from the community, her lessons fall on sleeping pupils.<sup>58</sup>

From her time parenting and interacting with Sesha, Kittay has learned lessons that she may not have come to realize without Sesha’s presence in her life. Her experience is testimony to why the inability to speak for oneself should not be taken to mean that a severely impaired person has nothing to say or teach others. Indeed, anyone who has spent a significant amount of time with a profoundly disabled individual knows that the minute signs of people with severe disabilities— the slight upturn of the lip when happy, the glint of the eye when excited, a grimace when she is anxious or upset— can signify something meaningful.

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<sup>57</sup> Eva Feder Kittay, “When Caring is Just and Justice is Caring: Justice and Mental Retardation,” *Public Culture* 13 (2001): 559.

<sup>58</sup> Eva Feder Kittay, “At Home with My Daughter,” in *Americans with Disabilities: Exploring Implications of Law for Individuals and Institutions*, eds. Leslie Pickering Francis and Anita Silvers (New York: Routledge, 2000), 68-69.



These arguments suggest that inclusive deliberations can foster communicative diversity. Most members of the disability community are capable of communication and participation in political deliberations, albeit sometimes differently from able-bodied citizens. What is required, from this perspective, is not communicative assimilation, but practices of translation. Sign language interpreters already do the work of translation. Similarly, people who can fluently understand individuals who communicate in alternative ways (mothers such as Lesley and Eva Kittay, for example) can and do help make the concerns of people with disabilities more easily intelligible for nondisabled audiences by acting to bridge the communicative divide. Furthermore, just as Fraser suggests that communication across lines of cultural and linguistic difference may be difficult, requiring that all citizens acquire “multicultural literacy” through practice, it can be argued that nondisabled citizens should be open to listening (and listening is not synonymous with “hearing”) and work at understanding alternative forms of communication. At the very least, all citizens can be expected to be open-minded and receptive to different communication patterns, rituals, logics, and norms. Inter-ability communication may be frustrating and messy, and deliberation may not produce perfect understanding between participants. But perfect understanding is not possible for those who “speak the same language” and share the same culture and history either, since communication is always susceptible to distortion and misapprehension.

## *VII. THE LINK BETWEEN PROCEDURAL PARITY AND DECISION-MAKING OUTCOMES*

If inclusion is economically costly and socially difficult, demanding significant cultural changes to de-stigmatize disability, and requiring people to acquire multicultural literacy and potentially endure the discomfort of talking with others across differences, why should we work so diligently to fully include disabled people into democratic life? What is lost by informally excluding them from our shared spaces, from our schools, workplaces, civic organizations, sports teams, and electoral political institutions? Fraser assumes that if we allow citizens to participate in collective decision-making as peers, it is more likely that the outcome will be a better decision. To be clear, she specifically acknowledges that gaps between procedural fairness and substantive justice may occur in the course of democratic decision-making, and that just processes can occasionally lead to unjust outcomes. Nevertheless, she cautiously implies that fair deliberation (meaning deliberation in the absence of structural power asymmetries) will more likely generate outcomes that further reduce social disparities.<sup>59</sup> This line of thought is certainly circular since substantive policies that reduce disparities are necessary to ensure procedural parity, and just procedures are required in order to bring about just outcomes. To escape this cycle and realistically apply her framework to a contemporary political landscape riddled by inequality, Fraser proposes the idea of “good enough deliberation.” She explains:

This expression refers to deliberation, that while tainted by power asymmetries and thus falling short of procedural parity, is “good enough” to generate outcomes that reduce disparities, so that the next round of political argument proceeds on terms that are somewhat more fair and can be expected to lead to still better outcomes, and so on.<sup>60</sup>

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<sup>59</sup> Fraser, “Identity, Exclusion, and Critique,” 331.

<sup>60</sup> Fraser, “Identity, Exclusion, and Critique,” 332.

Fraser thus acknowledges the complex symbiotic relationship between democratic procedures and deliberative outcomes, and she remains optimistic that incremental changes in the relations of deliberation will yield more egalitarian decisions. From a disability perspective, this concept serves as a reminder that actively working to include people with a range of impairments in formal and informal democratic spaces is paramount to achieving policies that procure social justice.

With respect to the relationship between inclusion and understanding, Fraser has much in common with deliberative democrat Iris Marion Young.<sup>61</sup> Young envisions a heterogeneous public where citizens start from their “situated positions” in attempting to construct a dialogue across differences. Unlike interest group pluralism, which does not require justifying one's interest as compatible with social justice, Young wants citizens to use deliberation to come to decisions that they determine to be more or less just.<sup>62</sup> For Young, difference is a resource for democratic deliberations because communication across differences leads to expanded understanding and increases the chances that people will transform their positions from self regarding and subjective views to broadened understandings of social good. Unlike Rawls, she rejects the idea that we can simply transcend our own particularities and identities in order to think about a political issue from the viewpoint of others. Instead, she argues, the standpoint of each of us in a particular socio-historical position “makes it impossible to suspend our own positioning” and shed our assumptions when we try to put ourselves in another person’s place.<sup>63</sup>

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<sup>61</sup> Bérubé, “Citizenship and Disability,” 53.

<sup>62</sup> Iris Marion Young, “Polity and Group Difference: A Critique of the Ideal of Universal Citizenship,” *Ethics*, 99 (1989): 267.

<sup>63</sup> Iris Marion Young, “Asymmetrical Reciprocity: On Moral Respect, Wonder, and Enlarged Thought,” 348-349.

In a rare move for deliberative democrats, Young explicitly uses the example of disability to support her argument. She examines a survey conducted on behalf of an Oregon health plan, which asked able-bodied people to put themselves in the situation of a person in a wheelchair. Because the able-bodied respondents were unable to transcend the particularity of their life experiences, let alone their privilege, the majority of them said that they would “rather be dead” than wheelchair bound or blind. Young notes, however, that the actual statistics of suicide rates among people with disabilities are rather low, and that when you talk with people with disabilities they usually think that their lives are very much worth living. This example bolsters her contention that we cannot adopt another person’s viewpoint by simply imagining the world from their point of view. “Generally speaking,” she writes, “able-bodied people simply fail to understand the lives and issues of people with disabilities. When asked to put themselves in the position of a person in wheelchair, they do not imagine the point of view of others; rather, they project onto those others their own fears and fantasies about themselves.”<sup>64</sup> By contrast, Young argues that when those with disabilities are included in deliberations, nondisabled people can learn to understand important aspects of their lives and make better political decisions. In her words,

I can listen to a person in a wheelchair explain her feelings about her work, or frustrations she has with transportation access. Her descriptions of her life, and the relation of her physical situation to the social possibilities available to her, will point out aspects of her situation that I would not have thought of without her explanation. In this way I come to an understanding of her point of view.<sup>65</sup>

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<sup>64</sup> Young, “Asymmetrical Reciprocity,” 344.

<sup>65</sup> Young, “Asymmetrical Reciprocity,” 355.

Her example suggests that by communicating with the disabled, other citizens are forced to confront their own stigmatized ideas about impairment.

What Young fails to address, however, is whether or not participation in political deliberation requires that all people have the capacity to think about their own life experiences, positions, and preferences in the context of other perspectives. If a person with a more severe cognitive disability cannot grasp someone else's position, for example, can he or she be said to be participating in a distinctively political procedure? In many ways, this is a more difficult question, and it is the type of question that cannot be answered by Young's example of a non-mentally impaired individual in a wheelchair. Turning to disability scholar Michael Bérubé's writings about his interactions with his son Jamie, who was born with Down syndrome, may shed some light on this issue.

In *Life as We Know It* (1998), Bérubé discusses how Jamie repeatedly challenges him to examine his preconceptions about political issues pertaining to family values, the relationship between public and private realms of life, and the social value of medical technology, among other things. Yet exchanges between him and his son are not a one-way street. According to Bérubé, Jamie continuously demonstrates that he is capable of understanding his own perspectives in the context of others, such as when Jamie and his dad discussed the ethics of Jamie's choice to eat meat after watching the movie *Babe*.<sup>66</sup> Learning from these kinds of experiences, Bérubé objects to claims that philosopher Peter Singer has made about what we should expect from children with Down syndrome in his

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<sup>66</sup> Jamie and Michael have had numerous discussions about the movie *Babe*, broaching topics about whether animals have feelings, whether one animal can behave like another, and whether it is acceptable to eat some animals. While at a BBQ restaurant, they had an interesting discussion which required Jamie to evaluate his choice to eat meat in light of ethical arguments to the contrary. See Michael Bérubé, "Babe and bbq," *American Airspace Blog*, Nov. 28, 2006: [http://www.michaelberube.com/index.php/weblog/comments/babe\\_and\\_bbq/](http://www.michaelberube.com/index.php/weblog/comments/babe_and_bbq/).

book, *Rethinking Life and Death* (1994). According to Singer, raising a Down syndrome child “can still be a warm and loving experience, but we must have lowered expectations of our child's ability.” In Singer’s estimation, “We cannot expect a child with Down syndrome to play the guitar, to develop an appreciation of science fiction, to learn a foreign language, (or) to chat with us about the latest Woody Allen movie...”<sup>67</sup> In response to such claims, Bérubé suggests that he might have agreed with Singer's argument when his son was younger. “I once believed— and wrote— that Jamie would not be able to distinguish early Beatles from late Beatles or John's songs from Paul's,” Bérubé confessed. But “now he (Jamie) knows more about the Beatles’ oeuvre than most of the people in this room. His interest in Star Wars and Galaxy Quest has given him an appreciation of science fiction, just as his fascination with Harry Potter has led him to ask questions about innocence and guilt. He is learning a foreign language, having mastered the “est-ce que tu” question form in French...”<sup>68</sup> The point that Bérubé drives home is that all human beings have unpredictable potential. As he puts it,

Over eleven years, then, we’ve [his family has] come to expect that Jamie will defeat or exceed our expectations when we least expect him to... [So] it might be a good idea for all of us to treat other humans as if we do not know their potential, as if they just might in fact surprise us, as if they might defeat or exceed our expectations. It might be a good idea for us to check the history of the past two centuries whenever we think we know what “normal” human standards of behavior and achievement might be...<sup>69</sup>

Quite simply, we cannot know what to expect of children with Down syndrome, just as we cannot predict the capabilities of a “normal” child. If understanding our own

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<sup>67</sup> Peter Singer, *Rethinking Life and Death: The Collapse of Our Traditional Ethics* (New York: St. Martin’s Press, 1996), 213.

<sup>68</sup> Michael Bérubé, “Wandering Back In,” *American Airspace Blog*, September, 29, 2008: <http://www.michaelberube.com/index.php/weblog/comments/1148/>.

<sup>69</sup> Bérubé, “Citizenship and Disability,” 53.

perspectives and interests in the context of others is a learned skill that is cultivated over time through practice, it seems unfair to discount people from practicing deliberation due to (perhaps misguided) assumptions about their innate capacities to do so. Not only is exclusion unfair, but it may create a self-fulfilling prophecy wherein those who cannot deliberate never acquire the skills deemed necessary to deliberate, which further justifies their exclusion.

Ultimately, Bérubé argues that we should embrace unqualified inclusion because in a democracy the best means by which we can achieve mutual understanding and value human dignity is by deliberating together. Like Fraser, he assumes that the more people and diversity of experiences that are active in democratic deliberation, the more likely it is that the substantive decision will be a better one. In Bérubé's words,

I think there's a very good reason to extend the franchise, to widen the conversation, to democratize our debates... The reason is this: a capacious and supple sense of what it is to be human is better than a narrow and partial sense of what it is to be human, and the more participants we as a society can incorporate into the deliberation of what it means to be human, the greater the chances that that deliberation will in fact be transformative in such a way as to enhance our collective capacities to recognize each other as humans entitled to *human dignity*.<sup>70</sup>

When we widen the conversation, it increases the likelihood that the process will be progressively transformative, for all involved learn to recognize each other's human dignity.

It follows that the political community has a duty to foster communicative diversity, allowing members of our political society to participate in deliberation "regardless of whether we have sustained serious hearing loss in one ear, regardless of

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<sup>70</sup> Bérubé, "Citizenship and Disability," 56.

whether we are incapable of uttering proper names, regardless of whether we mumble, regardless of whether we communicate by ASL.”<sup>71</sup>

In sum, preserving difference is in democracy’s best interest, since it not only follows through on the promise of preserving human dignity, but also leads to better deliberative outcomes that have the potential to benefit the public at large. The outcomes of deliberations cannot be determined in advance, but it is possible that interactions between able-bodied and disabled individuals may be progressively transformative. In any case, if people with disabilities are persistently isolated, marginalized, and excluded, individuals with disabilities are surely denied their human dignity, and the political community will never know what it is denying itself.

## VIII: *CONCLUSION*

In employing Nancy Fraser’s concept of participatory parity as a proxy for procedural inclusion, this essay has argued that some measure of economic redistribution and cultural recognition go a long way in allowing people with disabilities to overcome informal structural barriers to the exercise their civil rights. With respect to economic redistribution, many contemporary disability policies already work to provide disabled people an adequate standard of living so that they have the means and opportunities to interact with others as peers, even as many of these programs remain underfunded or impose overly stringent eligibility requirements. With respect to cultural recognition, a vibrant disability culture has emerged to challenge prevailing representations of disability, and within alternative “sub-altern counterpublics” (to borrow another phrase

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<sup>71</sup> Michael Bérubé, *Life as We Know It: A Father, a Family, and an Exceptional Child* (New York: Vintage Books, 1998), 244.



from Fraser) members of the disability community continue to fashion alternative positive self-representations. Yet, the mainstream culture continues to cast disability as deficiency, failure, and tragedy. Thus the essay has gone on to examine Fraser's participatory parity framework, using disability as a lens to better understand the relationship she posits between procedural inclusion and deliberative outcomes. Here the analysis finds support for her contention that inclusion in the processes of deliberation may lead to mutual understanding and hence better deliberative outcomes for all.

Nevertheless, the essay parts ways with Fraser on her substantive definition of participatory parity, which conflates participation with verbal communication. Participating as a peer in political life should not require that we all have the capacity to speak in a way that is easily discernible to able-bodied citizens. If the capacity for verbal speech is a prerequisite for citizenship, the result will be either the dissolution of people with disabilities as a multicultural group if they conform to ableist norms of communication, or their structural exclusion if they do not or cannot conform. Given that people with disabilities have not yet been fully included in most deliberative democratic theory, it comes as little surprise that Fraser's own definition of legitimate political communication cannot account for alternative modes of verbal and non-verbal communication. A simple amendment to Fraser's formulation, which considers people with disabilities as a distinct multicultural group, would allow for alternative forms of communication (which in some cases may even be non-verbal) to be considered legitimate modes of political speech.

Keeping the experiences of people with disabilities in mind, I have proposed a system of deliberation that relies on practices of translation in order to preserve

communicative diversity and avoid discursive assimilation. I understand that the cacophony created by preserving plural modes of communication may be difficult to navigate. It will require that all citizens make an effort to understand different communication patterns, rituals, logics, and norms. Given the legitimate objections that some people have about the time, effort, and resources that such communication may require, I hope that they seriously consider what is at stake. Not only does persistent marginalization and exclusion in the name of political efficiency deny people with disabilities their human dignity, but the entire community stands to lose by shutting out the unique perspectives of those living with impairments. Disability is a difference worth preserving— and difference is a resource, not a threat, to democratic decision-making.

## **CHAPTER FIVE**

### **DISABILITY AS VULNERABILITY: REDISTRIBUTING PRECARIOUSNESS**

Olof Palme, the late Prime Minister of Sweden, discussed the difference between American and Swedish attitudes toward people with disabilities while speaking at Stanford University's Law School in the 1970s. According to Palme, Americans regard able-bodied and disabled people as effectively two separate species, whereas Swedes regard them as humans in different life stages: all babies are helpless, requiring care from their parents; sick and impaired people are supported by those who are well; elderly people are cared for by those younger and healthier. He explained that able-bodied Swedes are willing to contribute the resources necessary to support a strong welfare state because they know that their turn at being dependent will inevitably come. Urging Americans to think differently about the issue of disability, Palme stressed that because nobody can foresee when they will experience illness or impairments, our political systems should be designed to accommodate the possibility.<sup>1</sup>

Americans have not changed their thinking about disability much since Palme delivered his speech. A recent poll found that 52% of Americans would rather be dead than disabled, which means that nondisabled people continue to view people with

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<sup>1</sup> Olof Palme, "Social Justice and Individual Freedom" (speech delivered at Stanford Law School, 1977).

disabilities as outcast “others” who are in a state unthinkable for themselves.<sup>2</sup> When people think about those with disabilities as a separate class of people— as “the disabled,” as “them,” as other than “us”— political issues pertaining to disability are mistakenly considered special interests concerning a small, exceptional subset of the population. However, the truth is that anyone can become disabled at any time because the human body is inescapably susceptible to a range of physical, cognitive, and psycho-emotional impairments. If we accept the principle that we are all vulnerable to varying degrees at different points along the life cycle, disability is understood as a dimension of human diversity rather than a tragedy, deficit, or abnormality. Furthermore, if we recognize disability as an essential characteristic of being human, citizens may begin to consider systemic reforms to accommodate bodily variation, reforms necessary for the flourishing of the polis at large. As philosopher Susan Wendell eloquently put it, “If the able-bodied saw the disabled as potentially themselves or as their future selves, they would be more inclined to feel that society should be organized to provide the resources that would make disabled people fully integrated and contributing members.”<sup>3</sup>

There has been a growing interest in the concept of vulnerability in much contemporary theorizing on subjects as diverse as public health, climate and geographical studies, security studies and risk management, and public policy. Few political theorists have directly tackled the concept, but several scholars in related disciplines have recently advanced vulnerability as a lens through which researchers can think differently about a

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<sup>2</sup> Disaboom, “Disaboom Survey Reveals 52 Percent of Americans Would Rather be Dead than Disabled”: <http://www.prweb.com/releases/Disaboom/Disability/prweb1082094.htm>.

<sup>3</sup> Susan Wendell, *The Rejected Body: Feminist Philosophical Reflections on Disability* (New York: Routledge, 1996), 110.

range of political issues, including human rights, (in)equality, the relationship between the biological human body and the social environment, the ethics of capitalism, and the state's obligation to ensure the well-being of its citizens. For example, in his "Theorising Globalization's Social Impact: Proposing the Concept of Vulnerability" (2006), Peadar Kirby proposed that the field of international relations should adopt the concept of vulnerability as an analytic category for understanding the impact of globalization on society.<sup>4</sup> In addition, sociologist Bryan Turner, writing in *Vulnerability and Human Rights* (2006), suggested that the human condition of vulnerability should influence how we approach debates about human rights.<sup>5</sup> More recently, in "The Vulnerable Subject: Anchoring Equality in the Human Condition" (2008), legal scholar Martha Fineman developed a theory of vulnerability in order to critique equal protection approaches to equality and non-interventionist state policies.<sup>6</sup> In sum, these recent analyses offer different frameworks for thinking about how the concept of vulnerability might inform research in the humanities and social sciences.

In this analysis I argue that a political appeal to a shared human vulnerability can deconstruct the able/disabled binary that continues to prevent political progress on the issue of disability. To develop the argument, I adjudicate between competing conceptions of vulnerability and its relationship to politics, focusing specifically on the writings of Alasdair MacIntyre, Michael Sandel, and Judith Butler. Although the existential facts of

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<sup>4</sup> Peadar Kirby, "Theorising Globalization's Social Impact: Proposing the Concept of Vulnerability," *Review of International Political Economy* 13 (2006): 631-655.

<sup>5</sup> Bryan Turner, *Vulnerability and Human Rights* (University Park: The Pennsylvania State University Press, 2006).

<sup>6</sup> Martha Fineman, "The Vulnerable Subject: Anchoring Equality in the Human Condition," *Yale Journal of Law and Feminism* 20 (2008): 1-23.

vulnerability and dependency are rarely factored into most mainstream political theorists' conceptual frameworks from the outset, MacIntyre, Sandel, and Butler are notable exceptions. Moreover, as we will see in the following analysis, their theories force us to rethink dominant political concepts— equality, reciprocity, and solidarity— and consider what kinds of structural political reforms would best suit the needs and capacities of vulnerable subjects. Drawing from all three while emphasizing Butler's politicized version of vulnerability, I make the case for how we can shift political efforts from a narrow focus on identity politics to a more encompassing vision of coalition politics, thereby removing the stigma of needing “special” protections for currently disabled people, while also making the case for the state to provide adequate protections for us all.

#### I. *ALASDAIR MACINTYRE ON VULNERABILITY*

*In Dependent Rational Animals: Why Human Beings Need the Virtues* (1999)

Alasdair MacIntyre argues that philosophers and political theorists have failed to adequately consider the nature and extent of disability and dependence as central features of human life. MacIntyre begins his book by insisting that “it is important to remember that there is a scale of disability on which we all find ourselves... and at different periods of our lives we find ourselves, often unpredictably, at very different points on the scale” (*DRA*, 73). From the outset he assumes that human beings are intrinsically vulnerable, that this vulnerability is constant, and that we are all prone to some extent to illness, impairment, disease, aging, and dependency, either permanently or in various phases of our lives. MacIntyre maintains that scholars should replace the autonomous and independent subject that is assumed in liberal theory with a more vulnerable, dependent

subject who is far more representative of actual lived experience. In “The Need for a Standard of Care” (2000), he explains why political theorists should position a vulnerable subject at the heart of our political theorizing:

We are all too apt to think of the disabled as a special, especially unfortunate class of human beings, and we are most apt to think of that class as one to which we do not belong... But to think in this way is to ignore central features of all our lives. For...we are all disabled for extended periods of those lives: as infants and small children, when old and when ill or injured, physically or mentally. And we are always vulnerable to further disability (*SC*, 84).

MacIntyre’s understanding of vulnerability has serious implications for the way we think about dominant political concepts, especially equality. According to MacIntyre, we are equal to the extent that we are equally vulnerable to the unpredictable fate of mortal animals. Nobody can escape the risk of impairment, disease, aging, and dying. In addition, the equality found in our common vulnerability introduces strong commitments for collective political change. If none of us are exempt from the potential ills wrought by human vulnerability, then none of us is exempt from creating structural safeguards against human vulnerability. In other words, MacIntyre’s understanding of vulnerability gives rise to an alternative understanding of solidarity and collective responsibility.

Second, vulnerability demands solidarity. In order to simultaneously respect the virtues of dependence and independence, MacIntyre argues that we must collectively design and foster patterns of social relationships of “giving and receiving.” He envisions a form of political society that allows the “virtues of acknowledged dependence” to flourish.<sup>7</sup> In his words,

The networks of giving and receiving in which we participate can be sustained only by a shared recognition of each other’s needs and a shared

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<sup>7</sup> Generally, the virtues of acknowledged dependence are the dispositions of character that allow us to recognize and respond to human vulnerability (*DRA*, 119-28).

allegiance to a standard of care. And what a standard of care measures is not only the quality and quantity of the care offered to those who are disabled relative to their needs, but also the success or failure in the exercise of the virtues... (*SC*, 84).

MacIntyre is admittedly vague about what this type of political society—a society that fosters patterns of “giving and receiving” and is committed to a “shared allegiance to standard of care”—looks like in practice. However, he is clear that the nation-state and the family are both ill-equipped to meet the needs created by human vulnerability and dependency. In his view, the modern liberal state is too large and contaminated by exploitative power relationships and competing economic interests to achieve the egalitarianism he desires. He also assumes that the family is too confining and limited to make lasting social change. As he put it, “...the common good of a family can only be achieved in and with the course of achieving the common goods of the local community of which it is a part.” MacIntyre therefore concludes that the virtues of acknowledged dependence will primarily be exercised in some form of local community setting where vulnerable citizens are Aristotelian friends—looking out for each other by reasoning together about what is good. In these local communities, citizens will acknowledge that vulnerability is “an ineliminable feature of the contemporary landscape” and therefore will not resent the resources that the political society affords the alleviation of vulnerability (*DRA*, 133-135).

Third, MacIntyre’s appeal to vulnerability has implications for our understanding of reciprocity. Accepting that some people are going to be more dependent than others at different stages of life, he insists that we must acknowledge that life is not a zero-sum game. Unlike many liberal theorists who envision social relationships in terms of mutual advantage, MacIntyre comes to terms with the fact that some people at times will need



more resources and that others are obligated to provide more when they are able to do so. It follows that reciprocity is often asymmetrical. Here MacIntyre goes so far as to appeal to Karl Marx: “Between those capable of giving and those who are most dependent and in the most need of receiving—children, the old, the disabled,” he writes, “the norms will have to satisfy the revised version of Marx’s formula for justice in a communist society, ‘*From each according to her or his ability, to each, so far as possible, according to her or his needs*’” (*DRA*, 130, emphasis added).

What reasons does MacIntyre provide to persuade us to potentially give more than we receive? He acknowledges that “what I am called upon to give may be quite disproportionate to what I have received” (*DRA*, 108). But why then are we supposed to accept this reality? Here MacIntyre’s formulation ultimately asks us to engage in collective action and structural reform out of our own self regard. MacIntyre calls us to action by arguing that we have various duties and obligations towards others, even strangers. For example, because we are all dependent as infants, we need to provide care to others (our elderly parents, for example) when we are able to do so: “It is nonetheless in virtue of what we have received,” he writes, “that we owe” (*DRA*, 101). However, he also asks us to think of ourselves. He spends a significant amount of time elaborating on the virtue of *miser cordia*. Drawing from Aquinas, MacIntyre describes the term as “grief or sorrow over someone else’s distress... just insofar as one understands the other’s distress as one’s own” (*DRA*, 125). A concrete example is the obligation to provide costly care to severely disabled individuals who will never return the favor. He writes, “Of the brain-damaged, of those almost incapable of movement, of the autistic, all of such we have to say: this could have been us. Their mischances could have been ours, our good

fortune could have been theirs” (*DRA*, 100-101). Although MacIntyre uses the past tense here, it is important to bear in mind that the person with severe brain damage *could* be ourselves in the future. As a disability activist in a wheelchair once said to me, “When you get in your car, you could become me in a matter of just three seconds in the event of a crash— this is why you should care about whether or not buildings have ramps.”

A major shortcoming of MacIntyre’s understanding of vulnerability is that he does not seriously consider how vulnerability is already unequally distributed in political life. While human vulnerability is a shared condition, *it is not shared equally in a context of political inequality*. The world is structured to respond to some people’s vulnerabilities better than others, so risk and exposure is manifested in uneven ways. Put simply, our political arrangements make some populations more vulnerable than others. Poor nutrition, dangerous living and working conditions, limited access to health care and vaccine programs, poor sanitation systems, and violent wars and conflicts exacerbate and produce physical, mental, and psycho-emotional impairments. It is not simply random that some people have disabilities (though chance certainly plays a role in developing many physical, mental, and psycho-emotional impairments). Rather, structural inequalities also produce impairments. When we take social standing into account, therefore, it comes as no surprise that disability tracks with social status, and that women and people of color disproportionately experience disabilities in the United States.<sup>8</sup> That

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<sup>8</sup> Vulnerabilities disproportionately cluster around identity markers. Dr. Leiyu Shi analyzes health disparities and vulnerable populations. In “The Convergence of Vulnerable Characteristics and Health Insurance in the US” (2001), he conducted an important study about health insurance coverage and found that race and income were the most significant predictors of health insurance coverage. This study suggests that the access to health care (or lack thereof) ultimately influences individuals’ risk of contracting illness. The findings reveal that racial minorities are disproportionately over-represented in bad health groups and that the adverse association between income, insurance status, and bad health affects minorities significantly more than white citizens. Shi concludes that “Although everyone is potentially vulnerable over an extended period of time, due to the differential susceptibility to predisposing, enabling, and need

said, MacIntyre challenges us to think seriously about the human condition more seriously than liberal theorists have traditionally thought, so that political systems and practices can be effectively designed to accommodate vulnerable subjects.

## II. MICHAEL SANDEL ON IMPERFECTION

Michael Sandel also appeals to a shared vulnerability in *The Case against Perfection* (2007), where he offers a persuasive critique of bioengineering practices. Unlike MacIntyre, Sandel does not directly employ the concept of vulnerability, arguing instead that human life is inevitably “mysterious,” “precarious,” and “uncertain.” In making the case for the concept of “giftedness,” the idea that “our talents and powers are not wholly our own doing...despite the efforts we spend to develop and exercise them,” he reminds us that no matter how hard we struggle for self improvement and excellence we are always vulnerable to our mortality and imperfection (CP, 27). Ultimately, Sandel contends that life is so inescapably mysterious and unpredictable that we must remain “open to the unbidden” and reject the impulse to completely control our fates (CP, 45).

Working from this assumption, Sandel opposes bioengineering on the grounds that the triumph of “willfulness over giftedness, of dominion over reverence, of molding over beholding” negatively transforms three interrelated features of our moral landscape— responsibility, solidarity, and humility. Sandel uses the example of prenatal

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attributes of risk, some groups of the population face greater risk than others.” See Leiyu Shi, “The Convergence of Vulnerable Characteristics and Health Insurance in the US.” *Social Science and Medicine* 53 (2001): 519-529; Similarly, a 2005 report by the U.S. Center for Disease Control concluded that “women (24.4%) had a significantly higher prevalence of disability compared with men (19.1%) at all ages” and that “non-Hispanic blacks bear a disproportionate burden of disease, injury, death, and disability.” See “Health Disparities Experienced by Black or African Americans—United States” (Center for Disease Control, 2005): <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5401a1.htm>; “Prevalence and Most Common Causes of Disability Among Adults” (Center for Disease Control, 2005): <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5816a2.htm>.

genetic testing to make his case, arguing that before the advent of prenatal testing, giving birth to a child with Down syndrome or another genetic disability was considered a matter of chance, whereas today many parents of children with Down syndrome feel judged and blamed for their child's condition. As a result of prenatal testing, he contends, people have lost the humility necessary to recognize that any one of us can give birth to an impaired child or that any one of us could parent a child who experiences a debilitating disease at a young age (prenatal testing cannot always accurately diagnose or prevent disability). Put simply, "A domain once governed by fate has now become an arena of choice" (*CP*, 88). According to Sandel, the shift from chance to choice has been accompanied by an individualization of responsibility, in which parents can either choose to abort the disabled fetus or knowingly and independently incur the burden of caring for the child once she is born. Sandel is clearly concerned with the attendant political consequences. For him, the individualization of responsibility undercuts political solidarity as people disregard any sense of linked fate and fail to ensure that society be structured to accommodate people with Down syndrome.

Looking more closely at the issue of political solidarity, Sandel is critical of the way in which individual choices to engage in bioengineering practices will undermine a sense of collective identity. For example, genetically engineering one's children to be more intelligent may result in individual success, but it comes at a high cost. In Sandel's words, "the explosion of responsibility for our own fate, and that of our children, may diminish our sense of solidarity with those less fortunate than ourselves" (*CP*, 89). Sandel draws an explicit connection between the contingency wrought by the condition of vulnerability and political solidarity:

Here, then, is the connection between solidarity and giftedness: a lively sense of the contingency of our gifts— an awareness that none of us is wholly responsible for his or her success— saves a meritocratic society from sliding into the smug assumption that success is the crown of virtue... If genetic engineering enabled us to override the results of the genetic lottery, to replace chance with choice, the gifted character of human powers and achievements would recede, and with it, perhaps, our capacity to see ourselves as sharing a common fate... [P]erfect genetic control would erode the actual solidarity that arises when men and women reflect on the contingency of their talents and fortunes (*CP*, 91).

Like MacIntyre, he suggests that vulnerability demands solidarity, arguing that we are united by our shared inability to eradicate misfortune from our lives and control our fates.

As an alternative to the pursuit for perfection through bioengineering, Sandel argues that people should resist the “Promethean impulse” to control our individual fates by exercising humility. Here he contends that the more alive we are to the chanced nature of our lot in the face of an unpredictable world, the more reason we will have to share our fate with others by organizing society to equally mitigate and distribute our risk. He writes:

Changing our nature to fit the world, rather than the other way around, is actually the deepest form of disempowerment. It distracts us from reflecting critically on the world, and deadens the impulse to social and political improvement. Rather than employing our new genetic powers to straighten “the crooked timber of humanity,” we should do what we can to create social and political arrangements more hospitable to the gifts and limitations of imperfect human beings (*CP*, 97).

Returning to the example of prenatal genetic testing, we see that prenatal testing is not Sandel’s primary target, but rather is symptomatic of a larger problem— the fact that we have created a society built on an ethos of competition instead of mutual obligation.

When prospective parents undergo prenatal testing, the cost-benefit calculations determining whether or not they should choose to carry and raise a disabled child reveal

that the individual costs are unbearably high.<sup>9</sup> If, on the other hand, we were to “create the social and political arrangements more hospitable to the gifts and limitations of imperfect human beings,” parents could forgo testing and rest assured that their quality of life would not drastically diminish under the immense pressure to unilaterally care for a child with “special needs.”

In the same way, Sandel also challenges us to rethink the concept of reciprocity. For example, he makes the case for supporting structural safeguards against shared risks. “Consider the case of insurance,” he writes. “Since people do not know whether or when various ills will befall them, they pool their risk by buying health insurance and life insurance. As life plays itself out, the healthy wind up subsidizing the unhealthy, and those who live to a ripe old age wind up subsidizing the families of those who die before their time.” Much like MacIntyre, Sandel acknowledges that reciprocity is often asymmetrical, and that some dependent members of the political community will require more resources than others. Yet since we are equally vulnerable and “people do not know whether or when various ills will befall them,” it makes sense to hedge our bets and ensure that care networks are available since none of us can escape the chance that we will be in a position of dependency either permanently or temporarily at some point in our lives (*CP*, 89-90). In this way, Sandel is also calling us to action out of self-regard.

As with MacIntyre, Sandel’s work lacks a serious consideration of the structural power relations that produce an uneven distribution of vulnerability across different

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<sup>9</sup> Barbara Hillyer’s book *Feminism and Disability* (1993) complements Sandel’s argument. Hillyer details her experience parenting a multiply-disabled daughter. She argues that parents of children with disabilities face many burdens alone: they often incur outrageous financial expenses for medical treatment, they are subject to invasive institutionalized control and bureaucratic monitoring from medical institutions, and they experience more social judgments about the quality of their caregiving than parents of nondisabled children. In short, parents are scapegoats of a society that fails to provide adequate resources for people with disabilities. Barbara Hillyer, *Feminism and Disability* (Norman: University of Oklahoma Press, 1993).

populations. In order to promote a shared civic identity, he appeals to our shared foundational human vulnerabilities and imperfections in the hope that this sense of community (a community bonded by a shared human condition) will strengthen citizens' sense of mutual obligation towards one another. Yet by glossing over pre-existing structural power differentials that disproportionately expose some populations to the risk of impairment, he also risks further entrenching existing structural inequalities. If the goal is to achieve a more egalitarian political order, we cannot disregard the way in which vulnerabilities are either exacerbated or ameliorated in stratified societies. Nevertheless, Sandel offers compelling reasons to abandon mutual advantage approaches to social cooperation in favor of an understanding of reciprocity that acknowledges some element of asymmetry. Since none of us can escape the chance that we will be in a position of dependency, either permanently or temporarily, it simply makes sense for all of us—even those of us who consider ourselves to be able-bodied and in “perfect health”—to hedge our bets by investing in political measures that enable disabled people to be fully accommodated in society.

### III. JUDITH BUTLER ON PRECARIOUSNESS AND PRECARITY

Unlike MacIntyre and Sandel, Judith Butler does not discuss the issue of disability in any detail in her writings. Nonetheless, her theoretical formulations (especially those in her later writings) about vulnerability hold infinite promise for disability politics. In *Precarious Life: The Powers of Mourning and Violence* (2004) and *Frames of War: When is Life Grievable?* (2009) Butler reflects on the aftermath of September 11, 2001 and explores the media's portrayal of armed conflict. She questions

how and why modern societies frame certain lives as worthy of grief and mourning and others as disposable and ungrievable. Butler is interested in the concepts of grieving and mourning because they expose the precariousness of human life while also revealing our unavoidable interdependency. In these works, she ultimately links a relational conception of the self to an ethics of collective nonviolence and to a politics requiring the radical redistribution of what she calls “humanizing effects.” Her venture into the realm of ethical politics and social responsibility is further developed in *Giving an Account of Oneself* (2005). These texts, alongside other insights from Butler’s larger corpus of work, are useful for disability theorists because they compel them to be attentive to both the universal and the particular dimensions of vulnerability when making claims about collective ethical imperatives and structural political reorganization.

In these works, Butler is outspoken about the political and philosophical context that shapes her inquiry. Politically, she takes a critical view of U.S. foreign policy and defends the humanity of victims of its aggressions in the “War on Terror.” Philosophically, she responds to critics of post-structuralism who charge that the concepts of agency and responsibility are lost after the radical deconstruction of the subject. Butler attempts to combine these projects by proposing a theory of collective responsibility for non-violent action that is directly tied to a theory of bodily ontology and subject formation. She writes,

I want to argue that if we are to make broader social and political claims about rights of protection and entitlements to persistence and flourishing, we will first have to be supported by a new bodily ontology, one that implies the rethinking of precariousness, vulnerability, injurability, interdependency, exposure, bodily persistence...and the claims of language and social belonging (*PL*, 2).



With respect to a “new bodily ontology,” Butler supposes that human bodies are by definition fragile because they can be expunged at will or by accident, and since no life transcends injurability and mortality. She sometimes refers to this fragility as the universal condition of “primary vulnerability” or “precariousness”:

I am insisting on referring to a common vulnerability, one that emerges with life itself...This is a condition, a condition of being laid bare from the start and with which we cannot argue...The condition of primary vulnerability...signifies a primary helplessness and need (*PL*, 31-32).

Butler assumes that this primary vulnerability is derived from both the mortality of the corporeal human body and the interdependency of the human condition. Here she starts from the assumption that the physical body is vulnerable to others and the biological environment. In this way, Butler shares with MacIntyre and Sandel the conviction that disability is, in many ways, unavoidable. Especially in her later writings, Butler refers to the body as an entity that is—above all else—susceptible to injury and suffering. Moreover, human vulnerability is exacerbated by our unavoidably interdependent nature. Indeed, for Butler humans are radically interdependent, which makes us open to being violated or inflicting violence on others. In her words, “None of us is fully bounded, utterly separate, but, rather, we are in our skins, given over, in each other’s hands, at each other’s mercy” (*GAO*, 101).

Critical to Butler’s treatment of vulnerability is how she distinguishes the universal condition of vulnerability from its particular experience. Here she makes a heuristic distinction between *precariousness* and *precarity*, emphasizing that by definition human vulnerability is affected by power relations. While human lives are universally vulnerable, precariousness is not distributed equally and is therefore experienced in a particular way. Butler refers to the unequal distribution of

precariousness as “precarity.” Precarity designates a politically induced condition in which certain populations are dehumanized and become disproportionately exposed to injury, violence, and death. Put simply, she writes, “lives are supported and maintained differently, and there are radically different ways in which human vulnerability is distributed across the globe” (*PL*, 32; *FW*, 25).

Butler understands precarity to take two forms. First, precarity is material, wherein some individuals and communities are made to disproportionately bear the burden of starvation, underemployment, and differential exposure to hazardous conditions that lead to injury and death. Secondly, precarity is perceptual. On the one hand, she points out that even though no amount of will or wealth can eliminate the possibilities of illness or accident for the living, “both (will and wealth) can be mobilized in the service of such an illusion.” On the other hand, some lives are perceptually cast as “destructible” and “ungrievable,” and through discourse “such populations are ‘lose-able,’ and can be forfeited, because they are framed as being already lost or forfeited” (*FW*, 25-31). Elsewhere she coins this process “dehumanization” and “derealization.” Using the example of disability to illustrate how norms dehumanize subjects, she writes, “the norms that govern idealized human anatomy work to produce a differential sense of who is human and who is not, which lives are livable, and which are not” (*UG*, 4). Hence, the perceptual dimension of precarity serves to justify its material manifestation.

For Butler, what is important to take away from the demarcation between precariousness and precarity is that while all human bodies are vulnerable due to their exposure to the hazards of the natural environment and to others, no human body is vulnerable in exactly same way. Structures of power— racism, classism, sexism,

heterosexism, ableism, and imperialism— create stratified societies which dehumanize certain populations and disproportionately expose them to injury, violence, and death, while simultaneously safeguarding privileged populations from hazardous conditions and relationships. She is particularly concerned with the way in which this process justifies and perpetuates the wounding and killing of people in the Global South, specifically of the victims of the U.S.’s War on Terror. In short, in contrast to MacIntyre and Sandel, whose theories of vulnerability focus on precariousness and overlook an analysis of precarity, Butler is attentive to structural power relations and embodied difference.

Butler devotes significant energy to painting a dismal picture of what happens when individuals and nation-states disavow vulnerability and individualize responsibility, showing how such actions undermine solidarity. At the individual level, the denial of our vulnerability through an institutionalized “fantasy of mastery” produces cleavages and inequalities (*PL*, 29). When disavowing vulnerability by appealing to its fictitious bounded sovereignty, the subject “shores itself up, seeks to reconstitute its imagined wholeness, but only at the price of denying its own vulnerability, its dependency, its exposure.” This process is best accomplished, according to Butler, when the subject “exploits those very features in others, thereby making those features ‘other to’ itself” (*PL*, 41). Although she does not provide a concrete example, she seems to be envisioning political acts of revenge. For example, victims of violent crimes who have been made increasingly vulnerable from an attack could either recognize this shared condition and work to ensure structural changes that mitigate the prevalence of violent crimes in all communities, or they can retaliate and exploit those features within others. What is important is Butler’s insistence that the process of alterity at the individual and macro-

level— the positing of a vulnerable “other” through the assertion of self-sovereignty— is ultimately self-defeating, for “to foreclose that vulnerability, to banish it, to make ourselves secure at the expense of every other human consideration is to eradicate one of the most important resources from which we must take our bearings and find our way” (*FW*, 30). Like MacIntyre and Sandel, therefore, Butler assumes that the acknowledgment of a shared human vulnerability is a strong impetus for solidarity and collective action.<sup>10</sup>

Although Butler has offered a theory of collective responsibility similar to that of MacIntyre and Sandel, I contend that her ensuing understanding of community and coalition-building distinguish her from them. MacIntyre and Sandel often invoke an image of a preconceived political community, sometimes without adequately interrogating the operations of power *within* those communities. Butler alternatively provides a foundationalist theory of political community that takes difference and power relations seriously. As I read her, human beings have common cause with all other human beings— even “anonymous others” whom we have never met— due to the shared human condition of vulnerability. Although it is somewhat surprising that she makes an appeal to a pre-discursive context, a move for which she has consistently criticized others, there is no denying the humanist undertones of her formulation. Butler reimagines the possibility of political community on the basis of loss: “Despite our differences in location and history, my guess is that it is possible to appeal to a ‘we’” because “loss has made a tenuous ‘we’ of us all” (*PL*, 20). That said, Butler remains attentive to the discursive and material operations of power that have positioned subjects differently within webs of

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<sup>10</sup> As Butler put it, “An obligation emerges from the fact that we are, as it were, social beings from the start, dependent on what is outside ourselves, on others, on institutions, and on sustained and sustainable environments, and so are, in this sense, precarious” (*FW*, 23).

cultural, economic, and political relationships. By taking power relations into account, Butler's vision of community results in "one in which we are all alike only in having this condition *separately* and so having in common a condition that cannot be thought of without *difference*" (PL, 27). What this means for an understanding of political community is that we cannot take solidarity for granted— active democratic coalition-making is still necessary to avoid further entrenching existing inequalities.

While Butler's account of radical democracy is underdeveloped, it has best been described as "an agonistic politics operating at the level of civil society."<sup>11</sup> As a prominent critic of identity politics, she urges democratic theorists to focus less on identity politics in order to move away from the kinds of interests that are asserted on the basis of identity claims. Instead, she explicitly calls for concentrating "more on precarity and its differential distributions, in the hope that new political coalitions might be formed" (FW, 32). She concludes that identity is a poor basis for political solidarity, since subject formation is an ongoing and unstable enterprise and precarity cuts across identity categories. In her words,

Coalition itself requires a rethinking of the subject as a dynamic set of social relations. Mobilizing alliances do not necessarily form between established and recognizable subjects, and neither do they depend on the brokering of identitarian claims. Instead, they may well be instigated by criticisms of arbitrary violence, the circumscription of the public sphere, the differential of powers enacted through prevalent notions of "culture," an instrumentalization of rights claims for resisting coercion and enfranchisement (FW, 162).

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<sup>11</sup> Moya Lloyd, *Judith Butler: From Norms to Politics* (Cambridge: Polity Press, 2007), 154.

While coalitions develop from shared positioning and shared concerns, they also evince antagonism and conflict.<sup>12</sup> In addition, collective action in and of itself is not enough for democratic politics. As Butler eloquently puts it, “social transformation occurs not merely by rallying mass numbers in favour of a cause, but precisely through the ways in which daily social relations are rearticulated, and new conceptual horizons opened up by anomalous and subversive practices” (*CHU*, 14).

Butler subsequently considers resignification and contestation to be important democratic practices, and in her work she consistently establishes a link between resignification and radical democratic practice. “Talking back” (linguistic resignification) and transformative bodily practices (corporeal signification) are forms of political resignification. In *Bodies That Matter* (1993) Butler refers to the resignification of the term “queer.” While still employed by some for its homophobic connotations, the term has importantly been appropriated by the gay community for a variety of overlapping usages to provide sexual minorities with the ability to engage in positive forms of name-calling and self representation. By resignifying the injurious term and giving it new meaning, the queer community can “open up possibilities for coalitional alliances” between feminist, anti-racist, and lesbian and gay political mobilizations (*BM*, 223-229). In her well known discussion of drag, Butler reveals the imitative structure of gender, which disrupts and undermines the heterosexist gender binary (male/female), thereby opening the possibility for gender pluralism (*BM*, 233; *GT*, 187). She qualifies her argument by claiming that “resignification alone is not enough for politics.” After all, the

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<sup>12</sup> Antagonism and conflict are central to Butler’s definition of democracy: “A certain agonism and contestation will and must be in play...for politics to become democratic. Democracy does not speak in unison; its tunes are dissonant, and necessarily so. It is not a predictable process, it must be undergone...” (*UG*, 226).

Nazis misappropriated the language of democracy to achieve an eugenic agenda, and black rappers' use of racially charged language remains problematic. In order to qualify as radically democratic practice, Butler suggests that resignification must be expansive and inclusive— extending norms to those who are disenfranchised— and working toward a more liveable life (*UG*, 223-224).

Butler is not always explicit about where practices of resignification and contestation will occur. Civil society is a space where the norms that govern life are reiterated on a daily basis, so it can be deduced that civil society is the optimal site for her vision of democratic struggle. This conclusion is reinforced by her repeated resistance to state-centric political theorizing. In *Excitable Speech: A Politics of the Performative* (1997), she questions the wisdom of social movement appeals to the state and the use of law and rights discourse to respond to injustice, particularly in the context of hate speech:

Strategies devised in the part of progressive legal and social movements...run the risk of being turned against those very movements by virtue of extending state power, specifically legal power, over the issues in question... Such strategies tend to enhance state regulation over the issues in question, potentially empowering the state to invoke such precedents against the very social movements that pushed for their acceptance as legal doctrine (*ES*, 23-24).

More often than not, Butler depicts the state as an instrument of violence, so the state is rarely discussed as a site of democratic transformation. She employs a Foucauldian understanding of “governmentality” to criticize political theorists who focus too heavily on the operations of the state as a site of change on the grounds that sovereignty is but one aspect of power (*PL*, 52; *FW*, 149). Because she is interested in the diffuse operations

of power in everyday life, she sees narrow appeals to state reform as inadequate and potentially self-defeating.<sup>13</sup>

Yet while she does not give the state primary status in her theorizing, Butler does not wholly disregard the state as a possible site of transformation. In scattered passages within *Undoing Gender* (2004), *Precarious Life* (2004), and *Frames of War* (2009), she cautiously entertains the possibility of the state as a site of democratic change. For example, after detailing the dangers of appealing to the state for gay marriage in *Undoing Gender*, Butler notes that “social policy, which involves the implementation of law, can very often be the site where law is challenged, thrown to a court to adjudicate, and where kinship arrangements stand a chance of gaining new legitimacy” (*UG*, 116). Likewise in *Precarious Life*, Butler repeatedly insists that we should object to the fact that detainees’ rights are being suspended indefinitely in Guantanamo Bay, and she appeals to the state by arguing that the detainees must be tried through criminal or military courts (*PL*, 86). And in *Frames of War*, Butler argues that the state has a central role in solving precarity’s material manifestations through “a more robust universalizing of rights” and redistributive measures to ensure the basic human needs for food, shelter, and other conditions for persisting and flourishing are met (*FW*, 28-29). Thus, despite her many reservations about progressive movements being co-opted into an extension of violent state power, she reluctantly concedes that “there may, indeed, be few other choices” for marginalized groups than to eventually engage with the state to remedy precarity (*FW*, 26).

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<sup>13</sup> For example, Butler worries that uncritical appeals to the state for gay marriage will become self-defeating and do more harm than good in the long run: “In making the bid to the state for recognition, we effectively restrict the domain of what will become recognizable as legitimate sexual arrangements, thus fortifying the state as the source for norms of recognition and eclipsing other possibilities in civil society and cultural life” (*UG*, 115).



#### IV. *SHARED VULNERABILITY AS THE BASIS FOR DISABILITY POLITICS*

So what are we supposed to do about human vulnerability, and how does it relate to disability politics? First, MacIntyre, Sandel, and Butler are united in the conviction that vulnerability is a resource for a more egalitarian political order. It is not something to be overcome or denied. Clearly, one can apply their critique of the disavowal of vulnerability to the contemporary landscape of disability politics. Second, Sandel, MacIntyre, and Butler's formulations on vulnerability can help shift the basis of political organizing from one predicated upon identity to a more coalitional conception of political action, although their visions of coalition-making differ in notable ways. Finally, these authors offer different vision of the state's role in mitigating vulnerability, but drawing from Sandel and Butler I suggest that disability politics should demand that the state improve protections for all citizens, thereby removing the stigma of needing "special" protections.

To begin, many disability theorists may be suspicious of the turn away from the presumption of autonomy and sovereignty as grounding concepts. After all, "Nothing About Us Without Us!" is a widely adopted mantra of the disability rights movement, and "independent living" has remained a major goal of several disability-related organizations. For good reasons, disability activists have appealed to autonomy to combat the excessive paternalism and exploitation that people with disabilities continue to experience in multiple facets of life. I suggest that the turn to vulnerability does not preclude political pursuits for autonomy. Neither MacIntyre, Sandel, nor Butler consider progressive appeals for independence and interdependence, physical autonomy and

human community, self-sufficiency and dependency to be irreconcilable pursuits. They simply claim that the predominant liberal focus on autonomy is unduly narrow. For instance, MacIntyre acknowledges that one becomes an autonomous, independent actor within caring interdependent social networks: “the virtues of independent rational agency need for their adequate exercise to be accompanied by...the virtues of acknowledged dependence...” (*DRA*, 8). Similarly, Sandel suggests that while liberal societies first reach for “the language of autonomy, fairness, and individual rights,” this part of our moral vocabulary may not always adequately equip us to address complex, multifaceted questions (*CP*, 9). Likewise, Butler explicitly argues that “the claim to bodily integrity and self-determination” is integral to pursuits for social justice, and that “it is important to claim that our bodies are in some sense *our own* and that we are entitled to claim rights over autonomy over our bodies.” Here Butler is not suggesting that we cease to make claims for bodily autonomy since “they are part of any normative aspiration of a movement that seeks to maximize protection and the freedoms of sexual and gender minorities, of women, and of racial and ethnic minorities [I would add people with disabilities]” (*PL*, 25-26). Again, she simply questions whether autonomy should be the full focus of progressive political campaigns:

If I am struggling for autonomy, do I not need to be struggling for something else as well, a conception of myself as invariably in community, impressed upon by others, impinged upon them as well, and in ways that are not fully in my control or clearly predictable? Is there a way that we might struggle for autonomy in many spheres, yet also consider the demands that are imposed upon us by living in a world of beings who are, by definition, physically dependent on one another, physically vulnerable to one another? (*PL*, 27).

In short, our political pursuits are largely shaped by power relations that precede and exceed us. The political context—the “spheres” that we inhabit— influence which values

are politically salient and the kinds of claims that we should be making on the state and each other. In a political context marked by excessive individualism and the privatization of public goods, MacIntyre, Sandel, and Butler's formulations on vulnerability open new possibilities.

Keeping this in mind, these authors all suggest that the disavowal of our shared vulnerability and the attendant individuation of responsibility is a problem that detrimentally affects both disabled and non-disabled individuals. Disability scholar Susan Wendell argues that "the myth of control" (a phrase similar to Butler's "fantasy of mastery") has been a major obstacle to coming to terms with the vulnerability of bodily life and investing in structural changes to collectively mitigate risks. Wendell describes the myth of control as "the belief that it is possible, by means of human actions, to have the bodies we want and prevent illness, disability, and death."<sup>14</sup> This myth is widespread in American life due to the dominance of scientific discourse of Western medicine. In addition, consumer capitalism also tells us that if we buy the right products, cultivate the rights habits, and employ the right medical technology we can essentially banish disability from our lives. This denial negatively impacts people with disabilities since avoidance results in social stigma, segregation, and institutionalization, which denies people with disabilities the opportunity to fully participate in civic life. The disavowal of vulnerability also manifests itself in inadequate disability, health, and social welfare policy.<sup>15</sup> Citizens who require additional healthcare, economic wage support, and

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<sup>14</sup> Wendell, *The Rejected Body*, 93-94.

<sup>15</sup> As Wendell puts it, "The myth that we can control the body... contributes to perpetuating non-disabled people's failure to identify with people with disabilities, and to the lottery approach to social (lack of) planning. Most people who are not disabled now will be disabled in the future. If they faced up to that, instead of hoping that medicine, diet, exercise, attitude, and moral goodness will save them from it, they would take social measures to provide for the needs of people with disabilities, increase accessibility to the

environmental adaptations to function in society are certainly disadvantaged by a political system that resents spending social resources to accommodate their needs. But we must also consider the fact that all citizens suffer from the lack of social safeguarding against vulnerability, since physical, mental, and psycho-emotional impairments are not something that a delineated, doomed group of people experience.

Second, MacIntyre, Sandel, and (especially) Butler's views on vulnerability each suggest that democratic disability politics must move away from identity politics towards a more encompassing form of coalition politics. Disability provides an example of the extreme instability of identity as a political category, since the disabled is a group that anyone can join at any time. In addition, people with disabilities often are understandably reluctant to focus on that aspect of their identity that is most negatively stigmatized by the rest of society and to mobilize politically around it. Moreover, collective action proves difficult, since people with disabilities often rarely come into contact with one another— they are oftentimes isolated within different families and do not live in community with each other. For these reasons, disability politics would benefit from a new form of political organizing.

Admittedly, MacIntyre and Sandel do not discuss coalition-making in any detail. They seem to suppose that we are automatically in solidarity with one another due to our shared human condition. As I read them, they assume that consciousness of our shared vulnerability is a strong enough impetus for collective political action. For Butler, by contrast, we cannot take political community and solidarity for granted. Instead, coalitions should be actively forged and “based on provisionally overlapping aims,” even

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public sphere, and guarantee good opportunities for everyone to participate in all aspects of social and creative life.” Wendell, *The Rejected Body*, 110.

though there will be antagonism over the best course of action. These coalitions will not be based on identity, since precarity cuts across identity categories. What this means for disability politics is that people with disabilities should make common cause with other vulnerable populations to achieve political goals that will benefit disabled people and also engage and affect a wider base of citizens.

In addition, Butler's performative politics has the potential to deconstruct the able/disabled binary that precludes solidarity and coalition-building. In response to powerful discursive regimes that construct the able body as the normative body and the disabled body as deficiency, lack, anomaly, monstrosity, and tragedy, practices of resignification challenge the social stigmatization of disability. Competing narratives have emerged within various sites of the disability movement. Disability scholars have cited the burgeoning Disability Arts Movement, in particular, as a site wherein various artists from diverse backgrounds and multiple perspectives disrupt the normalcy attributed to able-bodiedness and contest prevailing meanings attributed to disability.<sup>16</sup> For example, performance artist Mary Duffy, who was born without arms, explores her resemblance to the Venus de Milo in an effort to challenge dominant Western aesthetic ideals and resignify her rejected, disabled body as an icon of beauty. In the performance "Stories of a Body," Duffy delivers a monologue while standing naked with a partially draped cloth across her body (in a pose similar to that of the Venus de Milo). Contra dominant narratives that deem her body deficient and lacking, she reclaims her body as "whole, complete, and functional":

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<sup>16</sup> For a fuller discussion of the Disability Arts Movement see Sharon Snyder and David Mitchell, "Re-engaging the Body: Disability Studies and the Resistance to Embodiment," *Public Culture* 13 (2001): 367-389; Jennifer Eisenhauer, "Just Looking and Staring Back: Challenging Ableism Through Disability Performance Art," *Studies in Art Education* 49 (2007): 7-22; Carrie Sandahl and Philip Auslander, eds., *Bodies in Commotion: Disability and Performance* (Ann Arbor: University of Michigan Press, 2005).

The words you use to describe me are “congenital malformation.” Those big words those doctors used—they didn’t have any that fitted me properly. I felt, even in the face of such opposition, that my body was the way it was supposed to be. It was right for me, as well as whole, complete, and functional.<sup>17</sup>

The Heidi Lanski Dance Company’s GIMP Project offers yet another example of how performance art is employed to contest dominant meanings attributed to disability. The name GIMP is meant to be an in-your-face challenge to prevailing notions about disability. GIMP features four trained dancers and four performers who have physical disabilities. Onstage, the dancers are inviting the public to view their distinct abilities and bodily expressions rather than their particular limitations. The project’s mission is “to bring contemporary dance to a broad audience in a visceral and emotional way with performers whose unique attributes, physical and otherwise, are honored and utilized in highly dynamic, virtuosic and provocative ways...”<sup>18</sup>

Finally, I suggest that the state needs to take an active role in distributing precariousness in egalitarian ways in order to remove the stigma of needing “special” protections. Formal political equality has not translated into substantive social equality, and part of the problem resides in the fact that the Americans with Disabilities Act (1990) focuses its attention on the role of the employer in accommodating disability but it takes no ownership for the way in which the state itself should address the vulnerabilities of its citizens. The issue of health care policy illuminates the need for an interventionist state. Everyone benefits from broad, affordable healthcare coverage since vulnerability to illness and disability are constant and universal. It is likely that people with severe disabilities will make more claims and use more medical resources than able-bodied

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<sup>17</sup> Quoted in Snyder and Mitchell, “Re-engaging the Body,” 383.

<sup>18</sup> GIMP Project (2011): <http://www.thegimpproject.com/gimp/mission/>.

citizens, but able-bodied citizens should consider themselves to be *temporarily* able-bodied and willingly contribute taxes towards universal healthcare coverage since nobody can eliminate the possibilities of illness or accident from their own lives. Ultimately, I argue that disability should not primarily be thought of as a discrimination issue— it is an issue of public welfare. I do not want to suggest that equal protection under the law is unimportant or irrelevant. My point is simply that anti-discrimination legislation is limited in its capacity to secure the structural changes required to address precarity.

The call for an interventionist state is incompatible with MacIntyre's theory of vulnerability since he explicitly rejects the state as a site of transformation. However, in *Democracy's Discontent* (1996) Sandel supports distributive welfare state policies "for the sake of affirming the membership and forming the civic identity of rich and poor alike" (*DD*, 333). He is concerned with the civic consequences of inequality, arguing that it corrupts citizens' character and erodes the sense of national community necessary for civic self-government. Thus, Sandel supports an interventionist state insofar as it would give able-bodied and disabled citizens a sense of linked fate. In addition, my reading of Butler departs from that of scholars who argue that she completely forecloses the state as a site of democratic transformation. While she should perhaps engage the state more carefully, Butler's work in *Frames of War* (2009) considers its capacity to redress precarity through "a more robust universalizing of rights" as well as some measure of economic redistribution to ensure that humans can survive and flourish (*FW*, 28-29). In the end, her vision of state responsibility is congruent with that of many activists who advance progressive disability politics through an appeal to human rights.

## V. CONCLUSION

Over two decades ago, writing in *Making All the Difference: Inclusion, Exclusion, and American Law* (1990), Martha Minow demonstrated that legal remedies to discrimination often run into “the dilemma of difference.” According to Minow, the stigma of difference can be created, paradoxically enough, by both trying to ignore the factors that contribute to discrimination and also by taking those factors into account. The issue of special education highlights this dilemma. On the one hand, identifying a child as handicapped entitles her to individualized educational planning and special services, but in doing so the child is labeled “different” and is exposed to the risks of stigma, isolation, and reduced self-esteem. On the other hand, nonidentification frees the child from the risks associated with being labeled, but neutrality also denies her the special attention and services she may require to flourish.<sup>19</sup>

An appeal to vulnerability may offer one way out of this dilemma. By shifting the basis of political organizing away from identity, disability issues can be moved from the terrain of individual discrimination to social policy and planning. If states actively improve protections for all citizens to ameliorate the shared condition of vulnerability, people who need to utilize services will not face the stigma of needing “special” protections. At the same time, their needs will not go overlooked. If we take MacIntyre, Sandel, and Butler’s insights about human vulnerability seriously, we see that an

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<sup>19</sup> The “equal treatment approach” to inclusion risks reinscribing difference because a position of neutrality ignores the fact that most institutions were designed with the features of only some people in mind. However, a “special treatment approach” also risks reinscribing difference because when people demand special accommodations to remedy the fact that most institutions were designed in exclusionary ways they are singled out and labeled as “different” in order to qualify for the accommodations. Martha Minow, *Making all the Difference: Inclusion, Exclusion and American Law* (Ithaca and London: Cornell University Press, 1990).



individualistic approach to political planning is ultimately self defeating. None of us is exempt from the possibility of experiencing an impairing accident, so it simply makes sense for us to collaborate and contribute some measure of our resources to ensuring that *all* citizens have access to public spaces and services, some measure of health care coverage, and economic support in the event that steady employment is no longer possible.

The views of MacIntyre, Sandel, and Butler on vulnerability offer a timely corrective to a liberal political landscape marked by excessive individualism and a collective social imaginary wedded to “the fantasy of mastery.” The idea that we can banish impairment and even death from our lives if we simply buy the right products, cultivate the right habits, and employ the right medical technology is enticing and perhaps even comforting in the face of unpredictable fates. However, to think this way is to ignore one of the central features of the human condition, and in doing so deny ourselves a valuable resource for political solidarity and the attainment of a more flourishing democracy.

## CONCLUSION

This dissertation has attempted to establish disability as an integral subject of inquiry for political theorizing. As this project illustrates, moving disability from the margins to the center of analysis enriches political theorizing, not only because it allows scholars to seriously consider the experiences of people with disabilities, which is important since as a group their unique experiences and perspectives have been largely overlooked by most mainstream political theorists, but also because disability is a part of human life that impacts both political individuals and institutions. Because disability affects all people, both directly and indirectly, throughout various phases of their lives and across different contexts, placing disability at the center is desirable because, in the words of Simi Linton, “disability is a prism through which one can gain a broader understanding of society and human experience.”<sup>1</sup>

Ultimately the chapters of this dissertation situated disability at the heart of political analysis in order to shed new light on a range of issues: the political implications of discursive colonization and disablist representations; whether or not limited government intervention can adequately procure political freedom for those with and without impairments; how the experience of disability impacts the practice of citizenship; what, if anything, is owed to people with disabilities under existing schemes of

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<sup>1</sup> Simi Linton, *Claiming Disability: Knowledge and Identity* (New York: New York University Press, 1998), 118.

distributive justice; how to dismantle informal barriers to deliberative inclusion that persist even after people with disabilities have achieved the legal right to participate in public life; how to deconstruct the able/disabled binary in order to foster solidarity and engage a wide base of citizens to fight for disability rights. At the most basic level, the chapters of this dissertation were designed to serve as models for interdisciplinary theorizing, so that historians of political thought, liberals, poststructuralists, deliberative democrats, feminist theorists, and communitarians alike can imagine how a disability perspective might inform their respective areas of study.

The first chapter critically examined definitions of impairment and disability and firmly positioned disability within the realm of “the political.” The chapter maintains that disability should belong in the terrain of “the political” for several reasons. To begin, impairment and disability are socially and politically constructed. Many physical and mental impairments result from political choices and actions (for example, people can become impaired as a result of injuries sustained in war), and disabilities are socially constructed through discriminatory policies and practices. Add to this that people with disabilities comprise a large and distinct demographic group, and many in this group consider themselves to be political agents in social movements. Disability and impairment are also an unavoidable part of the human condition, and as permanent features of the political landscape they impact individuals and institutions. Thus in the vein of the feminist mantra that “the personal is political,” the private experience of impairment can be approached as a political occurrence. Finally, disability is political as a matter of public policy. For these reasons, disability is not simply an issue that should

be analyzed by medical professionals, psychologists, physical therapists, speech pathologists, and scholars in public health.

The second chapter analyzed practices of disablism and ableism in John Locke's writings. It demonstrated the ways in which these writings repeatedly dehumanize people with disabilities, ignore their heterogeneity, and erase their political agency. Locke deploys sweeping, monolithic portrayals of disability in an effort to reinforce his arguments about human understanding and political personhood, yet in doing so he perpetuates disablism by denigrating people with mental and physical impairments. This reading of Locke reveals that he considers disability an all-or-nothing inherent condition. That is to say, he assumes that people are either rational, economically self-sufficient, and independent, and therefore suited for citizenship; or, that they are totally irrational, dependent, and disabled, and therefore perpetually belong in the private sphere as non-political beings. In addition, the chapter suggests that Locke's liberal theory cannot accommodate people with disabilities because his theories on natural rights and minimal governmental intervention cannot procure political liberty for individuals with disabilities. In this way, the chapter contends that Locke's ideal political society is ableist, meaning that it was specifically intended to be created by able-bodied people for able-bodied people. This chapter ultimately contributes to political theorists' analyses of John Locke, adding another layer of questions about whether or not Locke's ideal political society was ever intended serve the interests of anyone besides white, propertied, able-bodied, prime-of-life male citizens. In addition, the reading of the text illuminates the dangers of the all-too-common practice of using disabled people as oversimplified

figures to mark the boundaries of political personhood, a practice that should be critically interrogated.

The third chapter examined several theories of distributive justice to determine how well people with disabilities, especially those with severe impairments, fare under theories of distributive justice. After analyzing John Rawls's writings, it concludes that justice as fairness cannot adequately procure justice for disabled for three reasons: 1) the condition of human dependency is omitted from the circumstances of justice, 2) those lacking the moral capacities who cannot contribute over the course of a full life are excluded from the original position and initial choice situation, and 3) the assumption that society is a cooperative venture for mutual advantage cannot explain why we should agree to create forms of social organization that will support and nourish some people who will never be capable of returning the favor. Turning to alternative formulations—specifically Eva Kittay's theory of justice as caring, and Martha Nussbaum's capabilities approach—the chapter concludes that a revised combination of the care and capabilities approach would be the most responsive to the situation of the disabled. What distributive justice requires, from this point of view, is that political societies provide the economic and cultural resources necessary to allow all individuals the capabilities to flourish *without* requiring that disabled individuals achieve such capabilities in return. This combinational approach offers an expansive notion of political membership, places the burden of change on the political society instead of the disabled body, and yet it does not stigmatize individuals with severe impairments who cannot achieve a threshold level of human capabilities even after the political society has made every accommodation necessary. In the end, this chapter uses the case of disability to test the validity of theories

of distributive justice writ large. Rather than thinking about people with disabilities as outliers with little bearing on the integrity of the theory as a whole, this chapter maintains that any theory of justice that cannot procure justice for the disabled is foundationally insufficient for all.

The fourth chapter strategized about how to overcome informal barriers to inclusion that persist even after disabled people are granted the legal right to engage in democratic deliberations. Using Nancy Fraser's concept of "participatory parity" as a proxy for inclusion, it suggests that a truly inclusionary deliberative democracy requires a more expansive model of political deliberation, one that can accommodate alternative (even non-verbal) modes of political communication. If the capacity for verbal speech is a prerequisite for citizenship, the result will be either the dissolution of people with disabilities as a multicultural group if they conform to ableist norms of communication, or their structural exclusion if they do not or cannot conform. In an effort to preserve communicative diversity, the chapter proposes a system of deliberation that relies on practices of translation in order to avoid discursive assimilation. While the cacophony created by preserving plural modes of communication may be difficult to navigate, it contends that the benefits of inclusion outweigh the drawbacks. The chapter ultimately challenges deliberative democrats to reconsider the potential drawbacks of coerced cultural assimilation, the relationship between cultural recognition and economic redistribution, and the link between procedural justice and deliberative outcomes.

Finally, the fifth chapter examined competing theories of vulnerability and its relationship to politics. The turn to vulnerability is important because it urges us to think about disability as part of the human condition, thereby deconstructing the able/disabled

binary that perpetuates that idea that disability issues are special interests that do not concern the wider political community. Focusing specifically on the writings of Alasdair MacIntyre, Michael Sandel, and Judith Butler, the chapter uses the lens of vulnerability to reexamine dominant political concepts— specifically equality, solidarity, and reciprocity— and consider what kinds of structural political reforms would best suit the needs and capacities of vulnerable subjects. It makes the case for how we can shift political efforts from a narrow focus on identity politics to a more encompassing vision of coalition politics, thereby removing the stigma of needing “special” protections for currently disabled people, while also making the case for the state to provide adequate protections for all members of the political community. Overall, this chapter explains why all citizens, not just currently impaired ones, have a shared responsibility for creating and funding political institutions that can accommodate cognitive and bodily diversity.

These analyses leave much to be desired, as they merely scrape the surface of interdisciplinary dialogue. Other political questions warrant further investigation. Can feminist theorists reconcile their commitment to reproductive freedom with the practice of the selective abortion of impaired fetuses? How have various technologies— and access to them— facilitated collective political action amongst people with disabilities? Is it important to have more people with disabilities in elective offices for the purpose of descriptive representation? What kinds unique challenges do people with non-visible impairments (for example, those with learning disabilities, chronic fatigue syndrome, and those with psycho-emotional impairments) face when claiming that they are experiencing discrimination? How does ableism, as a structure of power, interact and mutually

reinforce other structures of power such as racism, classism, sexism, and heterosexism?

These questions cannot be pursued here, but they will be necessary questions to interrogate in future considerations about the political nature of disability and the often disabling nature of politics.



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