

Disability in a society of equals

My task in this paper is to ask what we need to do if we are to construct a society in which people are to be treated as equals, whatever their disability status. Many of my conclusions will not be news to people who are active in the disability movement. However I intend to provide a conceptual framework for posing and attempting to settle this question, and to help clarify some policy objectives. Furthermore analytical political philosophy seems to have lagged behind social policy on these issues, and the treatment of disability by analytical philosophers has often seemed weak. I hope, here, to take some steps to correct this.

Three related questions will be central to this paper. First, what is it to have a disability? Second, in what way or ways are people with disabilities typically disadvantaged; and finally what should be done to rectify this disadvantage?

Before going any further it is worth considering some issues of basic terminology, both for its own sake, and for the introduction it gives to the philosophical issues. Once it was acceptable, and, indeed, normal practice to use such terms as 'cripple' or 'spastic', although these now seem less current, and have been replaced, to some degree, with more euphemistic terms such as 'handicapped' or 'impaired'. Yet both of these terms have been found objectionable, for different reasons. Although the idea of a handicap has entered general discourse in many contexts, such as horse racing, Shelley Tremain points out that, according to the Oxford English Dictionary, it derives from the phrase 'cap-in-hand' i.e. the pose of someone begging for hand outs. The handicapped went cap-in-hand to the more

fortunate, for charity, so it is said.¹ Whether or not this is accurate, the term is beginning to fall into disfavour with disability activists.

'Impaired' is problematic for a different - - more obvious - - reason. It is a normative term, implying the failure to reach a standard of normal functioning. Thus this conceptualises disability as a physical or mental shortfall or lack of some sort; in essence it apparently pre-supposes what is called the 'medical model' of disability, in which disability is conceived of primarily as akin to a form of illness. No doubt for many people this is an intuitive way of understanding disability, but it assumes a picture of disability that can be challenged. Again many disability activists refrain from using this term for these reasons. Those relatively new to the issue may think this is an example of 'political correctness gone mad', but I hope to show that to think this way would be a mistake.

What terminology, then, should we use? Anita Silvers suggests that practice differs in the UK and the US.² In the UK the accepted term is 'person with a disability'. The idea behind this is obvious; that one should see the person first, and the disability as a contingent property of the person, rather than the defining feature of that person. People with disabilities are, first and foremost, people. In the US, however, the preferred term is 'disabled person'. This is said to bring out the idea that people are disabled by the societies they live in. To explain, although it is a natural fact that individuals have certain physical and mental features, how these features enable them to function depends upon how society is configured in various ways. Thus, on this view - - the social model of disability - - disablement is something society does to people. Hence this usage captures the thought that it is important to remind ourselves that there is a sense in which the disabled are

victims of society; they are disabled people. (In this paper I shall use both terms: 'disabled person' and 'person with disability' more or less inter-changeably.)

Implicit, then, in these terminological choices are particular models or understandings of disability. The medical model sees disability as impairment, a lack of functioning. Thus the medical model answers our first question - - what is it to have a disability? - - by assimilating disability to a form of severe illness, to be attended to by medical professionals. The disadvantage of disability (our second question) is, on such a view, the disadvantage of impaired functioning. The proper remedy (our third question) is medical treatment to restore as much functioning as possible.

The social model, which has come to dominate much recent thinking, rejects this approach, refusing to identify disability with a biological notion of impairment, emphasising the social contingency of disability. For consider; there are times and places where the colour of one's skin can impede 'normal' functioning. Yet it would be absurd to think that the remedy for this is in the hands of the medical profession. Social change, not surgery, is required. It is an open question how far similar reasoning applies to issues of standard cases of disability. Certainly some physical features can be an impairment in one social context but not another.

Indeed in assessment of the view that disability is entirely 'socially constructed' we might even ask: could something even be an impairment in some contexts but an advantage in others? Sometimes it is said that in certain primitive societies those with unusual body shapes were treated as gods and goddesses.³ But we do not need to look so far for examples. Take Manute Bol, a 7ft 7in Sudanese man who became a successful

professional basketball player in the US in the 1980's. Although by no means a top-level natural athlete his extreme height gave him a huge advantage, making him one of the great 'blockers' of recent times. If the game of basketball did not exist his height may have been considered an impairment: certainly it makes many occupations and leisure pursuits unavailable. (Of course the right thing to say might be that it is both an advantage in some respects and a disadvantage in others.) But it would be dogmatic merely to assume that all disability is of such radically socially contingent nature.

The medical and social models of disability do not exhaust the field, but rather than conduct a survey I want to set out in schematic form a type of naive social theory that will help illuminate the issues raised so far, and to take us further. For the sake of the illustration suppose we have settled on a particular understanding of what it is for an individual life to go well or badly, insofar as this should be a matter of political concern. (I will, of course, discuss this in more detail below). Call this the individual good. Consider now a given individual. What will determine the opportunities that this person has to live an individual good life? Crudely there are two sorts of factors we need to enter into the calculations: what the person has; and what they can do with it.

The first of these categories we can call 'resources'; this includes both external resources - - money, control over parts of the external world etc - - and 'internal resources' - - Rawlsian natural assets. However, you cannot 'read off' from an individual's resources their chances of leading a good life. You also need to know facts about the social structures within that society; the influence of tradition, religion, language, culture and other social norms (such as what counts, within that society, as an acceptably 'normal life'); the

configuration of the material and natural environment, and perhaps other things too. Slightly misleadingly I shall refer to all of this as 'social structure'. Thus the overall formula comes to this: the interaction of your resources with the social structure within which you find yourself determines your opportunities to live a good life. A crude example: in some agricultural societies a man is more likely to have opportunities to live a good life if he is physically very strong; in technically advanced societies physical strength becomes of more marginal significance. If social structures determine the contours of a normal life, your resources and other aspects of the social structure will determine your chances of being able to live such a life.⁴

Against this framework we can see that the medical model of disability suggests that people with disabilities have a less extensive set of 'internal resources' than others, and recommend that we act to boost this set. By contrast the social model prefers to say that social structures discriminate against people with a certain resource-bundle and thus we need to change social structures to eliminate this discrimination. What do leading contemporary political philosophers say? Rather little, unfortunately.

Notoriously John Rawls declines to discuss what he calls 'the problem of handicaps' in *A Theory of Justice* side-stepping the issue by assuming a simplified model of the social world in which, among other things, no one suffers from disabilities. The justification offered for this is the suggestion that it is important to get the central cases right before dealing with special cases which may be distracting.⁵ However Rawls has not returned to the issues at any length.

Ronald Dworkin has considered the issues in greater detail. For Dworkin the disabled are conceptualised in medical terms as lacking a resource. His solution is that they should be given another resource - - money - - to compensate for this loss, and spends considerable time and ingenuity attempting to work out the right level of compensation.

Dworkin is typical of a number of especially egalitarian political philosophers who see compensation as the correct response to injustice. We could call this the 'compensation paradigm': where an injustice is to be rectified, let us use money. Yet, particularly in the case of disability, we seem to have reason to be suspicious. First, as far as I know it is very rare for disability activists to make this suggestion, or for it to form part of social policy. Second, we know there are alternatives (and they will be explored in detail later in this paper). Third, as I shall hope to show, it relies on implausible assumptions about the individual good.

The 'Ill' of Disability and the Individual Good

We have already noted that both the medical and social models of disability are likely to include answers to all three of our questions: what is disability?; what is the disadvantage of disability? and what should be done?⁶ As we add variations among these models, and new understandings such as the phenomenological model,⁷ we will have a new range of answers to these questions.

The new problem we then face, though, is that we have too many answers to our questions. There is no reason to think that the competing models of disability will converge

on a single scheme of redress for disability: indeed there is every reason to believe otherwise. How, then, can we make progress?

One route ahead would be to try to determine which model of disability captures its real essence. Once this is settled everything else should fall into place. Yet each model of disability seems to capture some element of importance. Would it be possible to provide a synthetic approach, combining the insights of all models? Perhaps, but the question would then be what to leave out, and unguided by a further principle or methodology any decision may look arbitrary. This then points to the idea that we should see if there is anything the diverse models have in common at a more abstract level. If so this may at least provide a guide for working out how to build the more complex model.

My conjecture is that there is a single insight - - albeit very vague - - driving all theorists of disability. In a discussion of the phenomenological model of disability, Gareth Williams notes that, on such an analysis people with disabilities need to 'renegotiate their place in the world', or in an alternative phrase 're-establish their place in the world'.⁸ Although Williams suggests that this is a contrast to the approach taken on the medical model, where the emphasis is to 'do things to the impaired body', it seems to me that defenders of the medical model may rightly protest. After all, they will say, the reason why we want to do things to impaired bodies is to allow people with impaired bodies to re-establish their place in the world. The disagreement is not on this general goal, but how to formulate the goal in proper detail and then how to achieve it. Thus I will take Williams' phrase as a statement that unifies all approaches: justice to those with disabilities requires

society to find ways for those people to establish (or re-establish) a worthwhile place in the world.

At this point we can see that just as each model of disability points to its own solution, it must, at the same time, make certain underlying assumptions, whether explicitly or implicitly. That is, in order to talk of establishing a place in the world, we need to know what it is to have a place in the world. Is it to earn a living? To enjoy a good level of well-being? To live independently? To have a real say in political decision-making? To contribute to the lives of others? To form close relationships and have children? To have a narrative unity to one's life? Or all of these or none of them? At the very least, with the idea of establishing a place in the world in mind we can see why notions such as 'enabling' and 'inclusion' have become so central to discussions of disability.

Putting this thought together with the naive social theory of the last section, we now have the following: one's resources and the social structure in which one finds oneself jointly determine one's opportunities to find a (worthwhile) place in the world. This three part (resources/social structure/place in the world) analysis is central to what follows in this paper.

Remedy, Compensation, Nullification

If our task is to consider what is owed to people with disabilities it seems vital to have on hand an account of the possibilities. That is, if we think redress of some sort is owed,⁹ it would be helpful to have an account of forms of redress. That is the task of this section.

It seems that redress for any injustice or other wrong can take a number of forms. While it would be wrong to pretend that terminology is entirely stable in this area we can, I believe, distinguish three broad families of redress or rectification, which I shall call 'remedy', 'compensation' and 'nullification'.

a) Remedy.

By remedy I mean something like restitution or strict rectification. If someone illegitimately takes an item of my property one form of redress would be to have it returned immediately. Thus the situation is restored to exactly the same as it would have been as if no injustice had taken place. If you knock down my wall, you can restore the situation by building it up again.¹⁰ In the context of thinking about disability, remedy means complete cure. It operates in the space of resources. A disabled person has a diminished resource bundle, and a cure restores that resource bundle to the proper level.

On the face of it, if remedy is an available option in respect of any injustice or other wrong it should be the first thing we should consider when attempting to find a form of redress. Does this mean that medical cure must always be the preferred option for redressing disability? Not necessarily. Even if it should be the first thing to consider, this does not mean that it must always be chosen. Why not? One reason is that if someone has evolved a pattern of life in which their disability is a central feature of their identity, then a medical cure may involve too severe a disruption to contemplate. Another, more mundane, consideration is that medical intervention has its own costs - - treatment may be lengthy,

painful, disruptive and arduous - - and this may tip the balance in seeking out some alternative.¹¹ Third, 'complete cure' must be very rare. Traces or more of disability will often remain, and thus full remedy, even in purely medical terms, is generally not on offer. In the terminology I shall adopt here, medical intervention is likely to be mitigating rather than to offer complete redress. Fourthly, whether or not complete remedy is available, medical intervention may be very costly in terms of its use of resources and this, at least in some cases, must be a relevant factor. I will return to this towards the end of this paper.

A somewhat deeper point is that to be fixated on the idea of cure assumes that the biological aspect of disability must be an impairment, which then must be capable of cure. In other words, as stated above, to concentrate on a cure is to concentrate on altering an individual's resource-bundle. This is to overlook the fact that one's life prospects are determined both by resource and social structures, and thus to ignore the possibility that, at least in some cases, alterations to social structures may be more appropriate.

However, abstracting from all these considerations there is an important further consideration, connected to ideas of respect, pity and humiliation, which I shall emphasise later, and which sometimes tells against a policy of remedy for disability. In conclusion while, where available, remedy is obviously an attractive option for redress of disability, there is also be another side to the story.

b) Compensation.

The term 'compensation' is used in a variety of ways. Normally the issue of compensation is only relevant in the face of some sort of deficit or disadvantage. Thus the Chief Executive does not receive a wage for his extreme efforts, but a 'compensation package', and then gets further compensation when fired for incompetence. You can compensate for an unbalanced bicycle by leaning over the other side. I can compensate you for the inconvenience I have caused you by giving you a cash payment. In general I understand the idea of full compensation as providing goods in one category to make up completely for the lack or loss of goods; generally, if not always, in another category. Compensation is thus to be distinguished from consolation, where a token of some sort is given to take away the immediate pinch of disappointment. Nozick defines compensation thus: 'Something fully compensates a person for a loss if and only if it makes him no worse off than he otherwise would have been ... In the terminology of economists something compensates X for Y ... if receiving it leaves him on least as high an indifference curve as he would have been without receiving it [had Y not been the case].'¹²

Nozick's reference to indifference curves provides one interpretation of what it is to be no worse off: a matter of equal preference satisfaction. On this understanding of well-being full compensation for a loss makes you neither pleased nor sorry that you have suffered that loss when it is packaged with the compensating payment. We should note, however, that in the real world compensation is often only partial - - it mitigates but it doesn't redress.

Can disability ever be fully compensated for? If our project is to compensate people for disabilities with money, then we have a radical project indeed. How much money

would you have to give a disabled person so that he or she becomes indifferent between on the one hand having the disability and the money, and on the other having neither the disability or the money? Obviously it depends on the person and on the disability, but even if we restrict ourselves to mitigating compensation a massive programme of transfers is in prospect.¹³ This does not, of course, show that compensation is the wrong approach to redress for disability, but it should make us wary about what might be achievable this way.

But need compensation be financial and need well-being be a matter of preference satisfaction? Taking the latter issue first, there are many theories where well-being is not identified with preference satisfaction.¹⁴ For example, the leading idea here of 'having a place in the world' is not obviously translatable into preference satisfaction terms. However if well-being is not a matter of preference satisfaction then the indifference curve test is an inadequate criteria of whether a measure fully compensates: to restore someone to their previous level of well-being is not necessarily the same thing as to restore them to their previous level of preference satisfaction. What would be a test? We cannot say any more on this score without a concrete proposal for an account of well-being. However, as compensation is generally thought of in preference satisfaction terms, I shall follow that usage in the remainder of this paper.

This leaves us with the question of whether compensation must always be financial. Of course it need not be, all sorts of things can make up for the lack of something else, but on my account to be compensation rather than remedy it will generally be a payment in a different kind of good than the one lost or missing. On my understanding compensation-proper is, we can say, cross-category, provided we draw the categories finely enough.¹⁵ But

we can conclude that compensation, like remedy, also operates in the pace of resources. Its response to a diminished resource bundle is to offer more resources, of a different type, to make up for the lack.

c) Nullification

Sometimes a disability can disappear without medical intervention. How so? By the world changing so that a formerly disabling characteristic is no longer so. This much we have learnt from the social model of disability. So, for example, if we are prepared to accept that being female can, in certain times and places, be a disability, then the point is easily made: liberation does not require surgical operation. A less controversial example: some years ago the standard colour-coding of domestic electric wires in the UK was changed. This was, I am told, so that those with common forms of colour-blindness could change their own plugs. A minor partial, or mitigating, nullification of disability.

Many suggestions along the lines of 'enabling' those with disabilities or for 'inclusion' are suggestions for mitigating nullification.¹⁶ The idea is that although an individual has a particular biological characteristic, we should do our best to ensure that such a characteristic does not exclude that individual from society. What do we do? So far we have not been very imaginative, but wheelchairs, access ramps, voice-activated software and so on are steps in this direction. More sensitive education and public awareness campaigns, including awareness and reform of linguistic practice, are also more steps we are taking clumsily. Even if nullification is rarely, if ever, total, we can mitigate

disability by partially nullifying the effects of impairment by social, political cultural and material action - - by changing social structures.

There are, no doubt, fuzzy boundaries between these concepts. Could one argue that wheelchairs and access ramps are (partial) remedy or compensation for disability, rather than attempted nullification?¹⁷ Ordinary language would probably allow this, but we can make some principled distinctions. Remedy tries to restore 'missing' resources; compensation substitutes different resources, while nullification does not touch resources but changes social structures.¹⁸ Which of these measures is the most appropriate form of redress?

Dworkin's Approach

As is well-known, Ronald Dworkin's suggestion for giving disabled people what is owed to them is developed from his theory of equality of resources. This is not the place to give a full summary of Dworkin's position, or of the criticisms to which it has been subjected,¹⁹ but to bring out first, the main themes of the general approach, second, what I consider to be its main disadvantage (and the disadvantages of some distinct and rival approaches), and third, why I think it still, nevertheless, provides a vitally important insight into how to take the discussion further.

For Dworkin, then, justice requires equality of resources, where this is to be understood as requiring an individual's share of resources to be 'endowment insensitive and ambition sensitive'. This means that inequalities of outcome are permitted where they

reflect the freely made choices of individuals, but not where they reflect the hand an individual is dealt by fate: bad brute luck. On this view certain categories of people - - especially those of low talent and the distinct but partially overlapping category of those with disabilities - - are theorized as lacking an internal resource. These people of low internal resources are to be given extra external resources to compensate for the loss. Given what I have said about compensation being only one form of redress we might wonder if a move in need of justification has already been made at this point, but let this pass, for the moment.

Now it is all very well to say that those who lack internal resources should receive extra external resources by way of compensation, but we need to know how much they should receive. Understanding the idea of compensation as specified above we would have to put each disabled person in a position where he or she no longer minded being disabled given the extra other resources they enjoy. Dworkin's does not find this an acceptable approach.²⁰

Rather than compensation so understood Dworkin instead supposes that we proceed by way of a hypothetical insurance market. Imagine, behind a veil of ignorance, you don't know whether you have or will acquire a given impairment, although you know its various effects and its statistical probability of affecting you. Imagine next you can take out an insurance policy which will pay out only if you have that particular disability. And it will, of course, pay out as a maximum the sum you have insured against. Naturally the cost of the insurance will depend on the probability of a payout and the level of cover insured against. Now in making decisions about rational insurance we need to strike a

balance. On the one hand we might be tempted to be very conservative and take out a huge amount of insurance. But on the other hand, if we end up making no claims under all the insurance policies we have then, although fortunate in one important respect, we might struggle to pay the premiums. So the balance must be struck so as to try to ensure that whether disabled or not our lives are not severely under-resourced. But just as we take insurance decisions in real life, we ought to be able to take this hypothetical insurance decision to determine the appropriate level of compensation for disability. Moving from theoretical device to policy, we should tax people as if they have taken out insurance policies against all forms of disability and provide cash benefits for people with disabilities at the level at which they would have insured.²¹

On the face of it, this proposal fits neatly into the ‘naive social theory’ framework set out above. A disabled person finds that, in the given social circumstances, their particular resource bundle allows them a lower chance of living a good life than they ought to have. Thus they are given another resource - - cash - - to make up for that loss.²²

There are, however, various problems and complications. First, we know that there are at least three possible approaches to rectify the disadvantage of disability: remedy (i.e. cure), nullification and compensation. Why pick one rather than another? G.A. Cohen, in one remark, suggests that cost should be the deciding factor in deciding to offer therapy or compensation.²³ But this seems counter-intuitive. Why?

Schematically I suggest the problem is this: approaches which take financial compensation seriously pre-suppose that the good life can be characterised independently of the means by which it is achieved. To illustrate, suppose the good life was defined

purely in terms of preference satisfaction. Within any given social structure it may be the case that numerous different resource bundles would provide an individual with a given level of preference satisfaction. In that case one has reason to be indifferent between the various resource bundles, in which case it is efficient to decide between them on grounds of cost. Similarly it may be the case that for a given resource bundle many different social structures would yield the same level of preference satisfaction. Here the individual should be indifferent between these social structures, and it makes sense to make a choice on the conservative ground of favouring the status quo. Hence proposals that accept the compensation paradigm appear to pre-suppose the independence of the good life.

The position is very different, however, if we assume that the good life is not independent. What I mean is that it may be the case that either the type of resources at one's disposal, or the place one finds oneself within social structures, are partly constitutive of the good life. If, for example, one thinks that the life of a slave, however happy, cannot be a good life, then one thinks that one's place in social structures is partly constitutive of a good life. No amount of extra money, or other resources, will help.

I do not pretend to have fully analysed the account of the good life in play here; the idea of a worthwhile place in the world. However we can surely accept that it is not independent of social structures for as long as it makes use of the idea of inclusion. Whether it is independent of resources is a further question. But we can now see what is wrong with Cohen's comment. We should not decide the issue of 'cure' versus 'compensation' in cash terms. Rather it should be in terms of what will best restore the individual to a worthwhile place in the world. Cure looks more promising. And we can

reply to Dworkin in similar terms. Compensation is generally a poor way of restoring (or creating) a worthwhile place in the world. The individualism of Dworkin's insurance market screens off the option of nullification. But even if remedy can be achieved by private medicine,²⁴ nullification must, in almost all cases, be a collective or social matter, requiring change to the social, political, cultural and material fabric of society.

The Problem of Perfectionism

Here, though, a different type of sceptic may start to worry about the perfectionist thread in the argument so far. In effect my criticism of Dworkin is that people with disabilities ought to be given the opportunity to be included in society, but the provision of compensation alone may not meet this goal very well. But here it might be asked why that is the goal? Surely the last thing people with disabilities need is a condescending political philosopher telling them what they ought to want. If we give individuals with disabilities money they can at least do what they want with it, rather than having it spent on their behalf. After all, one thing that people with disabilities might do is spend their money on projects to make the environment more inclusive, or on a medical cure. So it should be their choice, and if they choose not to spend money that way, so be it.

Dworkin himself raises this type of point with an example. Imagine that we believe that a paraplegic man should be provided with expensive equipment to improve his mobility. Thank you very much, he says, but I am a violinist and if you are going to spend money on me I would much rather you bought me a new violin.²⁵ Here we may be pulled

in two directions. On the one hand, if a person suffers from a lack of mobility then it may seem that what he is entitled to is the means to mobility and nothing else. On this view, then, there is no case for giving this man a violin. On the other hand, if it costs us no more, it is what he wants and improves his life, how dare we refuse?

There is a lot to be said about this example, but rather than attempt to say it all let me say instead that the example may be somewhat misleading. One thing to bear in mind is that wheelchairs are not really all that good, although, of course, normally better than nothing. A wheelchair is mitigating at best; it can never provide an equivalent to full functioning, and will sometimes even stigmatize its user in the eyes of certain others. So consider another example. Suppose we can offer, instead, an operation that would totally restore functioning and leave no trace of any sort. This can be known in advance to be a full remedy, quick and painless, and a complete cure. No thanks, says the violinist, just give me the cost of the operation and let me spend it however I want. I think that the objection that it would be perfectionist to refuse to hand over the cash seems in this case to have little, if any, force. This is not to say that we would never, in the end, decide that the money is better spent that way, but rather that we do not think we should be held captive to the individual's expressed preferences.

How can we explain this? Our starting point - - and this may only be to repeat the point rather than explain it - - is that the claim we feel is to help each individual find a place in the world, and this is not to be identified with a higher level of preference satisfaction. Other satisfactions cannot be traded off against inclusion, or at least not in all cases. If we believe this then we believe that the ill of disability is not the ill of a general

lack of resources, or the ill of a general lack of preference satisfaction. Rather, in each case, it is a loss or suffering of a highly specific kind.²⁶ Our duty, on this view, is to make good that particular loss if we can through remedy or nullification or a combination of the two. Elizabeth Anderson makes a similar claim: 'forms of remedy should match the type of injustice it matches'.²⁷ Usually, I believe, it is only if we can neither remedy nor nullify to a decent degree that we should look towards compensation. But even here compensation would be of a highly specific sort. First a cash payment may be justified to defray additional expenses and lost opportunities of disability: this would be a remedy of the economic loss. It is a further, and uncomfortable, question whether we feel that a payment beyond this would be justified, to provide mitigating (rather than full) compensation for other dissatisfactions.

I understand here that I may be preaching only to the already converted, and many will want to say that it should be up to each individual disabled person to judge what sort of redress would be appropriate, or at least to have more discretion than I have allowed. But is it really ever the case that a victim of injustice has the right to specify the form of the redress? All I can do to press this line of doubt is to point out that there are many examples where we do not think that people who suffer injustice have the right to determine how that injustice is to be remedied. Consider the following.

As a teenager (I think) I read a detective story, the name, author and plot of which escapes me. But one episode lodged in my mind. An elderly couple have bought a brand new Cadillac, of which they are overly proud. One morning, only a short time after they take first delivery of the car, they go downstairs to their locked garage, only to find the

murdered body of a stranger in the locked car. The police impound the car for forensic tests. A few days later the couple write to the police saying that because of the unpleasantness surrounding that particular car they cannot face having it back. So they would like a new one please. Only this time they would like it in red, with white trim, which shouldn't cost any more. The police write back a curt note saying that they can have it back, all cleaned up, when the forensic team is finished with it.

But imagine now that in the course of the tests the car was destroyed and so redress is due. And imagine too that red with white trim actually costs less than the original black. Still it is hard to get oneself in the frame of mind where it seems apparent that the couple have a right to name the colour of the replacement car, even if it might be thoughtful for the police to ask. Strict restitution is all that is owed, even if something preferred costs no more, or even, is cheaper.²⁸

For another example consider the recent change in practice among British domestic insurance companies. One insures against losing goods up to a certain valuation. It used to be the case that if your claim was agreed you were simply given cash. Now the practice is to replace the lost goods with equivalent goods. The reason for this change is pragmatic: to reduce the number of fraudulent claims. But the change was introduced with little fuss, and, so I believe, little opposition. Yet if one feels that one has a right to receive redress in one's preferred form, this should have led to strong protest. The absence of protest is presumably due to the widespread belief that one is entitled only to be put back into the exact situation one was in before the loss. Remedy or restitution, rather than compensation, in other words, is the most appropriate form of redress in these cases, and compensation is

to be offered only when restitution is impossible or impractical. Again there is not so much an argument here, as support for the view that my position is closer to common beliefs about redress than it might have been thought.

The Problem of Inferiority and Humiliation

Elizabeth Anderson suggests that what is wrong with much writing about disability is that the disabled are presented as making a claim based on their inferiority. However, their claim is properly based on their equality.²⁹ It is surely very hard not to be sympathetic to this thought, but there is a question of whether there may not be a false contrast at work here. Anderson's phrase seems to pre-suppose the following thought: 'all we, the disabled, ask is to be treated as the equal citizens that we are.' And fair enough. But how are we to do that? The obvious answer is that we should set up our social structures in such a way that they do not discriminate against people with certain resource bundles. Anderson says 'the disabled ask that the social disadvantages others impose on them for having the disability be removed.'³⁰

Again this is a fully reasonable call. But the problem is that discrimination is very rarely deliberate or 'imposed'. It is a very hard matter to set up social structures in the required way, and we often do not know that something has gone wrong until someone complains. Consider a striking example from Anita Silvers. When Microsoft introduced Windows this jeopardized the employment of many blind and visually impaired people who relied on screen readers that worked for DOS but not for Windows. As companies,

through normal commercial practices, updated their computer systems many such employees were threatened.³¹

This example is introduced here for several reasons. In the first instance it reminds us that the social world is a complex and, above all, un-coordinated, place. No one, however thoughtful, will have sight of more than a portion of it, and often we have to wait to find out the consequences of our actions (or inaction) as we cannot reasonably predict everything. Thus we need constant reminders that our existing practices, as well as changes, discriminate or disadvantage. We need to know where the shoe pinches. Are objections and claims for equal treatment by those who suffer made in the name of equality or inferiority? Perhaps the question is idle. But the message is that it can be virtually impossible to tell in advance and in detail how our practices are, or will be, discriminatory, and we need victims and potential victims to speak up so that the situation can be corrected.

Now, Anderson may well claim that this discussion misses her point. We must distinguish the necessity of revealing how one is affected by existing social policies, and how one would be affected by social policies purporting to rectify the problem. The person who brings their plight to the broader conscience may suffer a small humiliation in the process, but if the remedy offered was financial compensation for the loss of job we might well claim to find 'disrespect for the visually impaired' inherent in such a proposal. These people do not want to be pitied and compensated; rather they expect to be treated as equals in obtaining and maintaining employment. Anderson's point, then, is better put not

in terms of how one is forced to frame one's claim, but whether attempts to meet that claim are disrespectful, or stigmatising, or humiliating, and so on.

But how do we develop non-humiliating social policy? Isn't it humiliating to single out people with disabilities for any type of special treatment? Here the idea of nullification is especially pertinent. If disability can be nullified - - ie the world comes to be arranged so that biological characteristics become an irrelevance in certain respects - - then no one is singled out. Nullifying action is social. While carried out for the benefit of individuals it does not have to name, single out, or point the finger at any given individual, and it does not require declarations by individuals, humiliating or otherwise.³²

Clearly many current policies already take this form, but equally clearly we have made only small progress to date. How much more can be done on this score is partly a matter of how much effort and imagination we put in. Consider, for example, developments in the US motel business. Older motels often have no special provision for accessibility. More recent motels will tend to have a few rooms specially equipped. Presumably any disabled person, in booking a room, can request one of the special rooms. But some larger chains have now gone the next step: all rooms are accessible. So no one need mention that they are a wheelchair user when booking a room, for there is no fear of getting the wrong sort of room. In this very limited way, and very limited but significant arena, one form of disability is nullified.³³

Of course it would be even better - - both from the point of view of nullification and economic efficiency - - if having a disability was never seen as shaming or embarrassing, and so asking for an accessible room was psychologically as easy as asking for a room on

the no-smoking floor, or with an ocean view. Perhaps this is already the case for many people already, but it is far from universally so. In present circumstances this is not a change we can make quickly.

But to repeat. It is very important to note that whatever forms of nullification we attempt, it is very different in its workings from both remedy and compensation. Nullification acts on structures and institutions, rather than on the people who are to benefit, and so it often avoids any sort of identification of individuals, or humiliating applications for assistance. This is the important reason, then, that I still owe to explain why even when complete remedy is possible, it may nevertheless not be the ideal form of redress.

Disability Policy and Redistribution

Even though I have argued against much of Dworkin's approach, he nevertheless helps us to face up to a question which must be faced eventually but is more often ducked. How much of national income should we spend on provision for those with disabilities? One view might be that we take a utilitarian approach and simply spend money where it would do most good. This might mean spending a lot on provision for people with disabilities, but more likely it would not. Providing for people with disabilities can be very expensive and may not always do a great deal for their well-being compared to other possible uses for the same resources. Or we might take an egalitarian perspective. If we assume that at

least some disabled people are among the worst off in society then enormous tax, and public spending, would be necessary to try to bring about equality.

Dworkin's insurance scheme, suitably modified, provides another perspective. Suppose we set up a hypothetical insurance, but instead of the insurance payout being made directly to people with disabilities it is paid over to a government agency, and, of course, people make their (hypothetical) insurance decisions in the knowledge that this is how the money is to be spent. In other words we set a tax rate to provide for people with disabilities at a level which would be determined by everyone's hypothetical insurance decisions. This tax is paid over to the government agency which allocates its budget in the following way: the most important goal is to try to provide people with disabilities with the means to re-establish a place in the world. This requires medical care, but also social, political, cultural and material innovation: thus both remedy and nullification. It may also require subsidies for some forms of activity, and in some cases compensating payments to improve well-being when nothing else can reasonably be done.

This account raises many questions. The first, quite obvious, problem is the vagueness of the goal of establishing a worthwhile place in the world for people with disabilities. There are two immediate difficulties. First how do we specify the goal for any given individual: what is it to establish a place in the world? Second, even if the goal is fully specified for each individual, what should the collective goal of social policy be? I'll attempt to say something about the former problem before addressing the latter.

Much as I would like to be able to give a reasoned and plausible general account of what it is to have a place in the world, I am unable to do this in a satisfying way. But some observations are nevertheless worthwhile:

a) At the heart of the account will be the idea (unanalyzed here) of inclusion. This, we have seen, is the reason why compensation is unlikely to be the central form of redress for people with disabilities.³⁴

b) Any full account must make room for the insights of the various models of disability mentioned here, especially with relation to their account of what specifically is so disabling about disability. To this extent we can come to a rough understanding of what it is to have a place in the world through a disjunction of negatives: it is not to be excluded from the workplace; not to fail to enjoy a reasonable share of economic goods; not to feel stigmatized by other people's use of language, and so on. Ideally we would hope for further unifying insight, and some attempts could be offered, but I do not know of anything that would generate the richness of the idea we seek.

c) The idea of having a worthwhile place in the world is partly a threshold notion, in the sense that once achieved either you cannot have more or, alternatively, that having more is much less significant than reaching the threshold.³⁵ But it is also partly a matter of degree in that it is possible to move people below the threshold closer to it in numerous ways.

I do not pretend that this is enough, but it is all I can say here. But suppose we did have the account, what next? The most obvious idea would be that our first task must be to bring everyone to the threshold. Those above it should be taxed (but not to an extent which would bring them below the threshold) so that those below can be provided with the

multifarious forms of assistance -- including alterations to the social world - - that will eventually bring everyone over the threshold.

But is this correct? One difficulty is that it may just not be possible to bring everyone to the threshold. Second, even if it is, I have proposed that the resources to be devoted to such policies are to be determined not by the goal of bringing everyone to the threshold, but by the hypothetical insurance decisions people would make. This may turn out to converge on the same outcome but we cannot assume in advance that it will. To put this schematically, imagine that we gloss the idea of establishing a place in the world as that of achieving one's necessities. But beyond the realm of necessity is the realm of luxury. In our insurance decisions we may be prepared to give up quite a lot of luxury in order to reduce the chances of falling below the level of necessity. But are we prepared to give up all luxury for the sake of ensuring that we do not ever fall below the level of necessity? Perhaps if the threshold of necessity is set at a high enough level then we would. But then the chances of achieving it for all (and thus ensuring that no one falls below it) would be reduced. So there is clearly room for further discussion here.³⁶

To see the same issue from another point of view, imagine that you personally are a member of a small group who are the furthest away from having established a place in the world. In this sense then, no one has a bigger or stronger complaint than you. And suppose it is possible that every member in your group could be brought up to the threshold. However this would be only at great expense, not only in monetary terms but in terms of other values. Suppose, for example, making the environment fully inclusive requires, in addition to huge amounts of money, the demolition of some historic buildings, prehistoric

earthworks, and tracts of ancient forests. You, personally, as the individual with the greatest complaint, may think it is too much to ask, even if carrying out this project will not make anyone else (including future generations) anything like as badly off as you are now. So this might be another occasion where the right thing to do is compromise with compensation.

This may seem even more likely to be the case if a given individual cannot possibly be brought to the threshold. Imagine that how much we spend, and how much we try, all we can do is bring a person from a very low level of inclusion to a low level. Here we might think that there are clear limits to what we should do, even if we have only financial expense to weigh in the balance. Again the two tests - - rational insurance decisions, and what would seem a reasonable demand from the standpoint of the person with the greatest complaint - - seem to converge on the answer that some compensation should be offered, but nothing like as much as we might spend in the attempt to eradicate the complaint. Proposals must be seen in the context of their general consequences.

Does this mean that some people, or groups, will be permanently excluded? Not necessarily. Just as, in real life, one may adjust the level of insurance one takes out in the light of what current technology allows one to do with the payout, the same applies on a social scale. If there is a breakthrough in enabling technology, or medical care, then just as it would be rational for an individual to take out a greater level of insurance cover, it would be justified to increase taxes so people with disabilities can take advantage of the new opportunities. And if we seem to be on the verge of a social breakthrough higher taxes would be justified to pursue this.

Furthermore, although we might not feel justified in demolishing an old building simply because it is not accessible, it does not follow that when the time comes for renewal we can be justified in renewing it in a non-accessible way. So there is hope that general process of material renewal will allow us to include increasing numbers of people in new ways.

On this view, the disablement agency will be charged with the duty of spending the pseudo insurance payments in the most effective way possible; a combination of medical care (remedy) educational, social and material policies (nullification) and in some cases compensation. A variety of difficult and subtle decisions will have to be made, and regular involvement of people with a variety of disabilities would be indispensable. Of course various difficulties are bound to arise, but the framework I suggest should encourage an interesting reversal of some familiar considerations about public spending and efficiency. Standard anti-bureaucratic arguments suppose - - often quite correctly - - that bureaucracies and government agencies silt up under their own processes, and constantly lose the fight against efficiency. Thus they eat up more and more resources to keep performing the same functions. However the argument here is that the disablement agency can justifiably put out a greater call for funds only if it can use those funds in an increasingly effective way; that is, it is entitled to ask for more money only if it can bring more people up to the threshold. In effect it can charge more only if it offers a proportionally better insurance payout. The agency's funding, then, will depend on what it can do, and will vary depending on the state of its own programmes and potential technological and social breakthrough.

In summary, I have said that the goal of social policy should be to enable disabled people to find a worthwhile place in the world. Their opportunities in this respect will be determined by the resources at their disposal (internal and external) in combination with the social structures within which they are placed. Three approaches to the elimination of disadvantage have been discussed: remedy, which attempts to restore 'missing' internal resources; compensation, which substitutes external resources to make up for the loss; and nullification, which alters social structures. Given our goal, compensation is generally the least suitable option, and normally is appropriate only when the other forms fail. In the light of considerations of respect for individuals, among other reasons, nullification may often be the preferred option, if available. I have also suggested a way for determining how much of national income should be spent on providing for people with disabilities. But as always, there is more left to be said than has been said.³⁷

¹ Shelley Tremain, 'Dworkin on Disablement and Resources', *Canadian Journal of Law and Jurisprudence* 9, 1996: 343-359, p. 343n.

² Anita Silvers 'Formal Justice', in Anita Silvers, David Wasserman and Mary B. Mahowald, *Disability, Difference, Discrimination* (Lanham MD: Rowman and Littlefield), pp. 9-10.

³ cf Mairan Corker, 'Disability Discourse in a Postmodern World', in *The Disability Reader*, ed. Tom Shakespeare (London: Cassell, 1998) 221-233, p. 221, citing J.L. Connors and A.M Donnellan, 'Citizenship and Culture: The Role of Disabled People in Navajo Society', *Disability, Handicap and Society*, 8, 1993 pp. 165-80; and B. Ingstad and S. Reynolds-Whyte, *Disability and Culture* (Berkeley: University of California Press, 1995).

⁴ These points may seem obvious, but they liberate us from the debate: is justice a matter of evening out the effects of bad luck in the distribution of resources, or is it a matter of ending oppression? The answer is that it is both. For further discussion see my 'Economic Justice', in Hugh LaFollette (ed.) *The Oxford Handbook to Practical Ethics*, forthcoming.

⁵ In 'A Kantian Conception of Equality', in John Rajchman and Cornel West (edd) *Post-Analytic Philosophy* (New York: Columbia University Press, 1985) Rawls remarks '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.' (p. 206) For further, related, comments 'Social Unity and Primary Goods' in Amartya Sen and Bernard Williams (edd.) *Utilitarianism and Beyond* (Cambridge: Cambridge University Press, 1982, p. 168.

⁶ Although I do not strictly follow his analysis, these observations are greatly influenced by Jerome Bickenback, *Physical Disability and Social Policy* (Toronto: University of Toronto Press, 1993). See also Anita Silvers, David Wasserman and Mary B. Mahowald, *Disability, Difference, Discrimination* (Lanham MD: Rowman and Littlefield, 1998).

⁷ Gareth Williams, 'The Sociology of Disability: Towards a Materialist Phenomenology', in *The Disability Reader*, ed. Tom Shakespeare, 234-244,

⁸ Gareth Williams, 'The Sociology of Disability: Towards a Materialist Phenomenology', p. 240.

⁹ Talk of what is 'owed' raises the question 'owed in virtue of what?' This, in turn, could be a request for a specification of the alleged moral basis of the obligation - - justice or compassion, say - - or to express scepticism that anything at all is owed. I do not attempt to address these questions here. I assume that something is owed, but want to remain neutral on the question of its moral basis. Clearly there are important issues here, but they are not the topic of this paper.

¹⁰ What about your ‘lack of enjoyment of a wall’ while it is damaged or under repair? Clearly this is something that cannot be remedied, although compensation may be possible.

¹¹ see Simon Brissenden ‘Independent Living and the Medical Model of Disability’, in *The Disability Reader*, ed. Tom Shakespeare, 20-27.

¹² Robert Nozick, *Anarchy, State, and Utopia* (Oxford: Blackwell, 1974), p. 57.

¹³ cf Ronald Dworkin, ‘What is Equality Part 1: Equality of Welfare’, *Philosophy and Public Affairs* 10, 1981, 184-246, see especially p. 242, and ‘What is Equality Part 2: Equality of Resources’, *Philosophy and Public Affairs* 10, 1981, 283-345, p. 300.

¹⁴ For a useful discussion see Richard Arneson, ‘Human Flourishing versus Desire Satisfaction’, *Social Philosophy and Policy* 16, 1999, 113-142.

¹⁵ The cases where, say, money compensates for loss of money will be exceptional, for normally that would be a matter of remedy rather than compensation. However, if I, for example, steal the money you were going to spend on an opportunity that has now passed, I cannot remedy that loss with money but I may be able to compensate for it with money.

¹⁶ Although the term ‘mitigating nullification’ is not ideal, I shall use it as shorthand for ‘partial nullification which mitigates’.

¹⁷ For an account of how new technology can be seen or used as, in effect, either remedy, or nullification, or both, see Alan Roulstone, ‘Researching a Disabling

Society: The Case of Employment and New Technology', in *The Disability Reader*, ed. Tom Shakespeare, 110-128.

¹⁸ The problem of the 'blurring' of these categories reflects a different problem: it will be said that what one can do with a resource is part of the nature (or 'social meaning') of that resource, and so the 'what you have' and 'what you can do with it' distinction is incoherent. In reply, I would acknowledge that the distinction is not absolutely clear cut. Some measures straddle the categories. Yet it still seems to me that this is a useful distinction in that there are some clear cases where resource levels are directly changed and some clear cases where social structures are directly changed. The existence of difficult cases does not mean that all cases are difficult.

¹⁹ See in particular on the issue of disability Shelley Tremain, 'Dworkin on Disablement and Resources', and Colin McLeod, *Liberalism, Justice, and Markets* (Oxford: Clarendon Press, 1998, pp. 79-109).

²⁰ See references in footnote 13. However Dworkin's own approach would have similar consequences if the envy test is a criterion of equality, and those with disabilities are theorised as lacking a resource. [The envy test suggests that two people are equal in their possessions when neither person envies the 'bundle of resources' held by the other. The beauty of this test is that it allows us to say when the holdings of two people are equal even if the make-up of their bundles is very different.] In conversation, Dworkin has said that he never claimed that

satisfying the envy test was either necessary or sufficient for equality. And it is true that he can be read as denying sufficiency (pp. 285-6). However in his desert island auction story the envy test is introduced in the following terms: 'No division of resources is an equal division if, once the division is complete, any immigrant would prefer someone else's bundle of resources to his own bundle'. p. 285. Here the natural reading is surely that meeting the envy test is a necessary condition for a distribution to be considered equal. But it is interesting to note that the envy test appears to have dropped out of later work. For example it is not mentioned in 'Justice in the Distribution of Health Care', McGill Law Journal 38, 1993, 883-898.

For a discussion of the role of the envy test in Dworkin, which has influenced my thinking on the topic, see Miriam Cohen Christofidis 'Talent, Slavery and Envy', in Reading Dworkin, ed. Justine Burley, forthcoming.

²¹ Some critics have suggested that this means that: (a) people with very rare disabilities may not be covered as it would not have been rational to insure against minute chances; and (b) an individual's hypothetical insurance decisions will be determined by their attitude to risk, but this is an arbitrary way of deciding who should receive compensation, and at what level, for disability. (Anderson, p. 303). But neither criticism is convincing. Insurance against rare disability would be very cheap, and so a rational purchase, and the hypothetical

insurance market should be run under Rawlsian assumptions of 'no special psychological propensities'.

²² Dworkin may deny that people are to be given resources for any reason other than to ensure equality of resources (where the value of a resource takes into account what one can do with it in the prevailing social structure). However I am less concerned with giving an accurate exposition of Dworkin than with seeing how his approach can help us with various questions about disability.

²³ G.A. Cohen, 'On The Currency of Egalitarian Justice' *Ethics* 99 (1989): 906-44, p. 920.

²⁴ In fairness to Dworkin, it is true that in 'Justice in the Distribution of Health Care', the discussion is couched entirely in terms of collective provision of medical resources, where, for obvious reasons, collective provision can be more efficient than private provision. However, two points need to be made. First, there is no suggestion that money should be spent on anything other than medical care (both prevention and cure). Hence nullification does not appear in Dworkin's account. Second, in the light of the considerations I raise in the following paragraphs (concerning Dworkin's example of the paraplegic violinist) it is unclear how Dworkin can insist on providing medical care in any form if an individual would rather opt for money.

²⁵ 'What is Equality? Part 1: Equality of Welfare', pp. 243-4. Dworkin raises this example to embarrass theories of equality of welfare. He does not make his own

position on the example absolutely clear in the cited passages, although I believe that the natural reading of the theory of equality of resources is that we must allow the choice.

²⁶ Here I am contrasting two views: that individuals should be given means to preference satisfaction; and that individuals should be given the opportunity to make good particular losses. It could rightly be suggested that this is not an exhaustive distinction. Somewhere between the two is the idea that people should be given the means to lead a flourishing life, where this is understood objectively. This might well explain why we might be more sympathetic to the request for a violin than for a request for cash. However if it is agreed that if a perfect, painless, cure is available, than a violin should not be offered as an alternative, then it appears that we are committed to the view that there are separate 'spheres of flourishing' and a claim in one sphere cannot be cashed out in another (or at least not in all cases).

²⁷ Elizabeth Anderson, 'What Is the Point of Equality?', *Ethics* 109, 1999, 187-337, p. 304.

²⁸ Allowing the couple their choice is to make a Pareto-improvement. Isn't that enough to show that they do have a right to choose the colour after all? I doubt this. Even if we should never turn down the opportunity to make a Pareto-improvement this seems much more likely to be a matter of efficiency, or perhaps benevolence, than of justice or right.

²⁹ Anderson p. 289 Related points have been made by Shelley Tremain, 'Dworkin on Disablement and Resources', p. 344. Paul Hunt writes: 'I think the distinguishing mark of disabled people's special position is that they tend to 'challenge' in their relations with ordinary society. This challenge takes five main forms: as unfortunate, useless, different, oppressed and sick.' 'A Critical Condition' (first published 1966) in *The Disability Reader*, ed. Tom Shakespeare, 7-19.

³⁰ p. 334

³¹ pp. 107-8

³² I cannot claim that all nullification is of this nature, but I am on firmer ground in claiming that no rectification or compensation is.

³³ I am told that making rooms wheelchair accessible can make them harder to use for people who suffer from other forms of disability.

³⁴ I do not intend to suggest that inclusion is the whole story, for there are no doubt cases of disability where action is required for reasons that have nothing to do with inclusion. My point is only that inclusion requires special emphasis.

³⁵ cf Harry Frankfurt, 'Equality as a Moral Idea', *Ethics* 98, 1987, 21-43.

³⁶ cf Richard Arneson, 'Disability, Discrimination, and Priority', forthcoming.

³⁷ Near and distant relatives of this paper have been presented to many audiences and read and commented on by many people. In particular I would like to acknowledge the help of audiences at Virginia Commonwealth University, The University of New Mexico at Albuquerque, M.I.T., University College London,

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