

Disability and Sexual Justice

by

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B.A., University of Calgary, 2012

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## **Supervisory Committee**

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### **Supervisory Committee**

Dr. Colin Macleod, (Department of Philosophy)  
**Supervisor**

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## **Abstract**

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In this thesis my aim is to bring attention to the problem of sexual exclusion as experienced by members of the disability community and argue that this is an issue of justice. I do this by first discussing the value of sex. I maintain that sex is an integral part of a flourishing human life. Once this is established, I examine theories of justice and demonstrate how the systematic sexual exclusion of persons with disabilities can be understood as an injustice that must be addressed. Finally, I give an overview of some of the proposed solutions to the problem of sexual exclusion and conclude that the transformation of social attitudes is necessary for sexual justice.

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Finally, thank you to my partner, my closest friends, and to my family—especially Mom and Sarah. You inspire me to be the best I can be, and you help me up when I am at my worst. Thank you.

## Dedication

To my friend Ray, without whom I may have never heard the words “sexuality” and “disability” used in the same sentence.

And to Rob, who I don’t really know, but whose question, “Who ever said we’re entitled to sex?” pissed me off enough to find an answer.

## Introduction

The role and place of sex in human life is multifaceted and brings with it many goods. From procreation to recreation, we desire sex for a variety of reasons—these reasons reflecting and revealing something about us and our preferences. Whatever our personal experience of and opinions about sex, it is a fundamental aspect of not just a human life, but of a *good* human life.

In this thesis my aim is to bring attention to the problem of sexual exclusion as experienced by members of the disability community. I do this by first outlining three views of the value of sex: the hedonistic view, the procreative view, and the flourishing view. I maintain that the former two views focus primarily on sex's physical nature, and by doing so they neglect the other important features of sex, such as its social/emotional and political goods. I provide a comprehensive outline of the flourishing view of sex, which includes physical, social/emotional and political aspects of sex.

Once these views have been discussed, I expand on the problem of sexual exclusion as experienced by members of the disability community. This is perpetuated by many social and institutional factors, including misconceptions that characterize persons with disabilities as “asexual,” as having no interest in sex, or of being incapable of having sex. Many of these assumptions are plainly untrue, yet they are pervasive because of the system that supports and perpetuates these myths. Moreover, the sexual exclusion of members of the disability community continues to go unaddressed because it is not considered a relevant issue of justice.



When members of the disability community have been considered subjects of justice in the past, it has pertained generally to issues of employment, transportation, housing and other related concerns. As one author notes,

The disability rights movement has never addressed sexuality as a key political issue, though many of us find sexuality to be the area of our great oppression. We may well be more concerned with being loved and finding sexual fulfillment than getting on a bus. (Waxman & Finger 1991, 1)

However, it is not so simple as to merely proclaim that sexual exclusion is a matter of justice—we must find a way to establish the issue *as* a matter of justice. I examine Rawls's view of justice and find that it is ultimately unsuitable for addressing the sexual exclusion of persons with disabilities because there is no immediately obvious way to frame the problem. Instead, the capability approach proves to be a much better framework with which to work when discussing issues of disability and sexual exclusion.

With the capability approach laid out, I develop the issue of sexual exclusion further, and discuss it as an issue of access. Sexual exclusion, as an issue of access, can be understood as a lack of access to relevant sexual requirements such as sexual information, resources, privacy, external support, choice and individual autonomy, as well as sexual partners and opportunities to be regarded as a sexual equal. I also provide a variety of testimony from persons with disabilities to more fully illustrate these issues of access.

Finally, I examine the variety of suggestions that have arisen with respect to disability and sexual exclusion. These suggestions range from methods of facilitated sex—which is sex with the assistance of a third party, to sex with sex workers who specialize in working with disabled clients. While I argue there is reason to be receptive

to some of these methods, I also think that the reform of social attitudes is needed to fully address the issue of sexual exclusion. However, because social change does not happen overnight, I discuss the concept of public advocacy groups as one way of promoting the sexual interests of members of the disability community. Historically, other social movements have benefitted greatly from this kind of structure—from the civil rights movement, to women’s movement, to the LGBT/queer movement.

The sexual inclusion of the disability community is necessary not only for the wellbeing of members of the community itself, but would also be to the benefit of all sexually active persons. When we embrace a greater sexual diversity, we promote sexual justice for all.

## Chapter 1

### 1.1 Introduction

Sex makes available a variety of unique and important goods. These include procreation, sexual pleasure, intimacy and connection with others, and some aspects of personal or sexual identity. Though sex offers many goods and contributes to a flourishing life, there are some who are systematically denied opportunities for sexual connection. In particular, disabled people are often unjustly denied access to the goods of sexuality. I call this the problem of sexual exclusion.

In this chapter, I have two aims. The first is to outline three views of the value sex: (i) a hedonistic view, (ii) a procreative view and (iii) a flourishing view. I maintain that the procreative and hedonistic views are too narrow and neglect some important elements of sex, which the flourishing view accommodates. My second aim is to discuss the ways in which persons with disabilities are systematically denied opportunities for sexual expression and connection. One of the ways this exclusion is perpetuated is through narrow views of sex. The way in which we conceptualize sex and sexual agency will influence our understanding of sexual rights and entitlements. The flourishing view provides a basis for establishing politically important sexual rights. With this in mind, a just society ought to respect the sexual claims and interests of its citizens, especially those who may require some form of sexual assistance.

## 1.2 Overview of Key Concepts

Before I begin my discussion, I will offer a brief overview of some important terms. The first of which are concepts of sex and sexuality. Although these terms are obviously similar, they are not necessarily interchangeable. Sex, in this context, refers to embodied sexual activity between two or more persons. By contrast, sexuality can be understood on an individual basis and, more specifically, has come to mean “the personalized sexual feelings that distinguish one person from another (*my* sexuality), while hinting at that mysterious essence that attracts us to each other” (Weeks 2000, 4). In other words, sexuality is a trait or quality that persons have independent of having sex.

The terms persons with disabilities, disabled people, and members of the disability or disabled community,<sup>1</sup> refer to individuals who have significant physical or cognitive impairments.<sup>2</sup> Generally speaking, impairments are the medical condition(s) that individuals may have, such as Down syndrome, cerebral palsy, muscular dystrophy, etc. Some theorists argue that disability differs from impairment in that, while impairment refers to a physical condition, a person may be in a disabling environment (Sheldon 1999, 644). For example, a wheelchair user may require wheelchair accessible public spaces such as wheelchair ramp entrances to buildings, accessible washrooms, public transit, and so on. In this way, impairment may not *necessarily* be disabling, so long as public space and social sentiments are inclusive to individuals with impairments. I agree with this characterization to a degree. While persons are morally equal regardless

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<sup>1</sup> Please note that I use these terms interchangeably throughout this project. I recognize that there may be reason to favor one term over another, but issues around labels and terminology are not something I focus on in this project. Regardless of my phrasing, I believe persons—regardless of any factors or identities—are morally equal to one another.

<sup>2</sup> Additionally, I may use the phrase disability community or disabled community as shorthand for members of the disability community or persons with disabilities. By referencing the community itself, I want to acknowledge the individuals as situated in a group that have common experiences.

of their level of ability, I think it is both important and respectful to acknowledge a difference in practical function between persons of different physical abilities. In my discussion, I will be focusing specifically on persons with physical impairments such as spinal cord injury, muscular dystrophy, polio, multiple sclerosis, cerebral palsy, amputation, etc. When appropriate, I will clarify what these disabilities entail and how they might alter an individual's functioning. Cognitive disability, on the other hand, is beyond the scope of this project because it involves more complicated issues involving perception, consent, maturity, etc.

### **1.3 The Value of Sex: Three Views**

When sex is understood as something primarily physical, one may understand the spectrum of views (about sex) as ranging from the hedonistic, at one extreme, to the procreative, at the other. While a proponent of the procreative view might imagine sex as little more than a necessary action for the purpose of reproduction, an advocate of the hedonistic view may see reproduction as an extraneous outcome in the pursuit of sexual pleasure. I maintain that these views are both too narrow. The flourishing view includes both pleasure and procreation as aspects of sex's physical nature, while also recognizing other facets of the value of sex such as human connection, intimacy, and identity.

Additionally, I distinguish between (i) what is valuable about sex and (ii) what forms of sexual relations are morally permissible on these views. My primary focus is (i) but I will also mention instances of (ii), as put forward by those advocating either the hedonistic or the procreative view. This is because what someone holds to be true with respect to (i) will ultimately influence his/her views or beliefs about (ii).

### 1.3.1 The Hedonistic View

On the hedonistic view, the value of sex is located exclusively in the physical pleasure created by sexual activity. Other non-hedonistic components of sex are seen as distinct from sex. Other elements of sex, such as intimacy or interpersonal connection are seen as good only insofar as they contribute to sexual pleasure (i.e., are not seen as sexually good in themselves). An advocate of this view would argue that the ultimate end or purpose of sex is physical/sexual pleasure. This hedonistic view is in many ways far too simple; it neglects to take into account many of the social or more complex goods of sex.

One representation of this view is found in Alan Goldman's paper, "Plain Sex". Goldman claims, "Sexual desire is desire for contact with another person's body and for the pleasure which such contact produces; sexual activity is activity which tends to fulfill such desire of the agent" (Goldman 1977, 268). In other words, the end or goal of sexual activity is the physical contact and pleasure that it brings. Goldman's definition of sexual desire deliberately excludes desires for love, affection, communication, etc. that may also be involved in sexual activity. Though we may, in some cases, express feelings of love and affection through sex, this is not an inherent feature of sex. Normal sexual desire, Goldman maintains, is *simply* the desire for physical contact with another person (269). Of sex itself, he claims that it is "the physically manifested desire for another's body, and [...] the immersion in the physical aspect of one's own existence and attention to the physical embodiment of the other" (270). Goldman argues that analyzing sex in terms of love or reproduction places certain moral limits or restrictions on sex, which he deems needless for the most part. He writes, "There are no moral implications whatever. Any analysis of sex which imputes a moral character to sex acts in themselves is wrong for that reason. There is no morality intrinsic to sex" (280). For Goldman, a sexual ethic

would function much the same way as a business ethic—that is, with special rules that apply in specific circumstances (280). Ultimately, the model of morally acceptable sexual relations Goldman endorses is one of reciprocity in a Kantian sense: sexual relations are only immoral when they are one-sided, when the activity lacks mutuality, or when the exchanges are not “freely or rationally endorsed by all parties” (282). Even in cases when a sexual act seems inherently objectifying, Goldman claims that one ought to recognize his/her partner as a subject with desires and interests by “allowing oneself to be a sexual object as well, by giving pleasure or ensuring that the pleasures of the acts are mutual” (283). Finally, Goldman imagines the pleasures of sex as “brief and repetitive” as opposed to cumulative (283). Thus, sexual pleasure only gives value “to the specific acts which generate them but not the lasting kind of value which enhances one’s whole life” (283).

### **1.3.1a Critique**

The hedonistic view as represented by Goldman’s paper has a few substantial weaknesses, not the least of which is his simplistic definition of the goods of sex (i.e., as principally physical). Goldman’s defence of sexual objectification as an acceptable outcome of sex is somewhat unclear to me. He seems to suggest that sexual objectification may be considered morally permissible so long as *both* partners are rendered sexual objects (thus maintaining his condition of reciprocity/mutuality). He writes, “Even in an act which by its nature ‘objectifies’ the other, one recognizes a partner as a subject with demands and desires by yielding to those desires, by allowing oneself to be a sexual object as well” (283). I see no reason why objectification is necessary here at all. If Goldman means objectification in the sense of a

depersonalization of one's partner or oneself, this strikes me as straightforwardly wrong. Sex need not be objectifying, and moreover, one ought not to *desire* to be treated as or to treat others as objects.<sup>3</sup> Quite simply, a person is not an object. And as such, a person deserves respect and to be treated with dignity.<sup>4</sup> However, perhaps Goldman means that one can recognize one's partner as a person with interests, desires, etc. while at the same time being aroused by a partner's physical features such as the shape of one's body, one's smell, etc. It seems Goldman is most likely referring to objectification in this sense (or in Kantian terms, it is morally permissible to treat someone as a means, but not as a *mere* means). I agree with this characterization to a degree, though the idea of "objectification" seems to imply the wrong kind of sentiment to have with respect to sexual partners.

My next point of disagreement with Goldman is in his view that sexual pleasure does not give lasting value that enhances one's life. As Goldman has construed sex in such stripped-down terms (as the title of his paper suggests), he neglects to take into account other inherent aspects of sex. He claims that sex is, at its core, about the pleasure that comes from physical contact with another's body. However, sex is also, on this definition, inherently social: it requires a collaborative effort of more than one person. As Goldman's definition of sex is expressed mainly in terms of pleasure and nothing else, he neglects many of the other goods of sex—those that *do* contribute lasting value that enhances one's life. His argument revolves around the idea that sex is mainly a means to

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<sup>3</sup> In certain sexual subcultures, such as the Bondage/Discipline/Dominance/Submission/Sadomasochism (BDSM) community, objectification is more commonplace. In some of these cases, objectification may take on a different meaning (one that is not related to abuse). Alternatively, the dominance/submission roles may be an extreme form of the eroticization of gender hierarchy. Depending on certain elements, some BDSM practices would highlight some aspects of the flourishing view of sex (such as political/identity based goods of sex) while downplaying other goods (such as social goods). However, the history and internal complexities of sexual subcultures are beyond the scope of this thesis, and I will not be discussing them directly.

<sup>4</sup> The concept of dignity is also discussed in Nussbaum's formulation of the capability approach, which I mention more fully in the following chapter.



pleasure, and (at least to some degree), that pleasure is pleasure and thus sexual pleasure is perhaps comparable to other physical pleasures. Imagine some other pleasurable activity such as receiving a massage. To use Goldman's wording, the desire to have a massage is for the pleasure that having a massage produces in me. The pleasure of having a massage does not contribute lasting value that enhances my life. It might do so for a short period of time, certainly. But going for massages is something I would do frequently because the pleasure it produces is brief and repetitive. Evidently, the pleasure one receives from a massage (or some other pleasurable activity such as eating a delicious meal or spending time with loved ones) is not the same as sexual pleasure. If Goldman were correct in his argument that sex is purely about physical pleasure, then other physical pleasures should be comparably similar to sexual pleasure. However, sexual pleasure is exactly *not* like other physical pleasures and so it may be problematic to regard it as such. If sexual pleasure were understood in broader terms, as a type of pleasure that involves both physical *and* social aspects, then sexual pleasure would indeed enhance one's life. For instance, if an individual had great sex only once in his/her entire life, arguably, his/her life has been enhanced even though sexual pleasure is, as Goldman claims, brief.

Overall, Goldman's narrow understanding of sex causes him to lose sight of other inherent goods, such as sex's social aspects, which I hold are just as inherent as sex's physical/pleasurable aspects. More generally, the hedonistic view of sex is far too simple. As sex is a good that is multiply realizable and dependent on the interests of different persons, to conceptualize it *only* in terms of physical pleasure is not only an unnecessarily

narrow conceptualization but plainly incorrect. Clearly, there is a deep and prevailing human interest in sex, and it goes beyond the physical.

### **1.3.2 The Procreative View**

The procreative view of sex takes reproduction as the ultimate goal or proper end of sex. With this in mind, because the procreative view values sex primarily for its reproductive potential, many sexual acts are deemed morally impermissible because they fail to recognize the “proper end” of sex. A proponent of the procreative view may argue that sex ought not to be treated as an end in itself, but as a means to reproduction, or alternatively, sex may be viewed as one part of a longer process, which at its core includes reproduction.

Depending on how strictly we might imagine the procreative view, sex could potentially be limited only to times when a woman is ovulating. Moreover, if procreation were strictly the goal, sex would be limited to heterosexuals, and would be short-lived and more or less physically unfulfilling. In this depiction sex becomes little more than a task to ensure reproduction. However, since this view is exceptionally narrow, I will broaden the scope of the procreative view slightly, so as to discuss a fuller image of what this view might entail.

In his article, “Procreation and Sexual Desire,” G.P. Gleeson argues for a particular understanding of human sexuality, which “has implications for the morality of actions which interfere with human fertility and procreation” (Gleeson 1988, 209). His discussion builds on the conceptual framework of Roger Scruton’s *Sexual Desire* (1986) in which Scruton offers a conservative sexual ethic. Gleeson’s definition of sexual desire involves “the awakening of one’s body to the thought of the other’s embodiment” (198).

Furthermore, of this “awakening” he claims it is “not something one brings about directly in oneself,” (i.e., is necessarily social) but rather, it is an “involuntary response of one’s body to the embodied other, their self-conscious moral agency, intentions, values, and especially their desire” (198). In this way, the procreative view defines sexual desire in more serious terms than the hedonistic view: when we sexually desire another, we are taking into account aspects of the other’s agency, intentions, values and desire. As we will see, on this view, sex is regarded as something of a serious affair: involving aspects of the self, and beyond our “animal individuality” (193). By contrast if we recall, the hedonistic view defines sexual desire as simply the desire for physical contact with another’s body and the pleasure this contact produces.

On the procreative view, our embodiment is said to bring about “an intentional unity between the animal and the personal dimensions of human existence” (193) and thus, a subsequent sexual morality is “a morality of the body and of embodiment, whose norm is ‘marshaling and directing animal urges towards an interpersonal aim, and an interpersonal fulfillment’ within monogamous marriage” (193-4). According to this conception, then, sexual perversion occurs when there is deviation from the unity of animal and interpersonal, (i.e., when sex is impersonal and purely “bodily”). Moreover, on this view, there is a “deficiency” involved in the use of contraception: “In contracepted intercourse, it might be said [...] a couple desire to be united as persons while repudiating the procreative animality” (194). In this way, Gleeson and Scruton insist on “unity” of both personal (self) and biological (bodily) elements in sex.<sup>5</sup> With respect to gender, Scruton argues that one’s biological sex is directly correlated to one’s

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<sup>5</sup> Note that this suggests a non-procreative dimension to the value of sex. Gleeson and Scruton allow for a dimension of intimacy in sex, but only insofar as it is connected with the procreative element.

gender; in this way, “one is embodied sexually *as a man or as a woman*, and not simply as a human being, because the fact of being male or female must be incorporated into one’s identity as a person” (195).<sup>6</sup> Moreover, there is a natural complementarity to the categories of man/masculinity and woman/femininity, and this complementarity is seen as highly important. Unlike Goldman, Gleeson and Scruton maintain, “Biological facts acquire *moral* significance once they are drawn into the intentional world of persons” (196). Gleeson adds that natural law arguments regarding sex, similarly, depend on a “teleology of bodily organs and functions” (196). (For example, the idea that a mouth is for eating and talking, not for oral sex.) In this way, Gleeson and Scruton are able to make moral claims about sexual acts in themselves (such as homosexual or contracepted intercourse). In a similar vein, Gleeson argues that this account of sexuality must do justice to facts of fertility and reproduction (196). He adds that a couple need not intend to procreate every time they have sex, rather, it is the *potential* for procreation that is regarded as deeply important with respect to sexual union (200). Therefore, both homosexual intercourse and contracepted intercourse are seen as morally impermissible. The former involves “a loss of openness to the mystery of another sex” (i.e., lacks the good of complementarity) and the latter involves “a loss of openness to the risk and mystery of procreation” (200). This view relies on a moral ideal of sexuality “which recognizes the complex interaction between the biological and the intentional within the project of sexual intimacy” (201). Thus, contraception is seen as a deficiency or contradiction of sorts to heterosexual acts, as the potential for procreation is of fundamental importance to the intentionality of sexuality (201).

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<sup>6</sup> This notion directly negates some instances of feminism, which suggest sex and gender are separate categories.

### 1.3.2a Critique

There are features of the procreative view that are too narrow as well as presumptuous.

For example, there is the assumption of two sexes (which neglects to include or acknowledge intersex or hermaphroditic persons, which are *biologically* determined). If it is important for there to be openness to the “mystery of another sex” during intercourse, how do intersex persons enter in, if at all? On that note, it is not entirely clear as to why it is not sufficient that one be open to the mystery of another *person* during sex—rather, it must be someone of the opposite sex. Though Gleeson explains the importance of complementarity (of sex/gender), this seems to be an arbitrary distinction to make. It seems I could just as easily claim that similarity (as opposed to difference) is most important with regard to partners because the most important thing in relationships is mutual understanding and this could be more straightforwardly accomplished between same-sex partners.

Furthermore, under the procreative view, there are assumptions with regard to reproduction as the “natural” end or outcome of sex, where contraception is said to interrupt this natural end. However, reproduction is often not the outcome of many sexual encounters (even without the use of contraceptives). One might say then that pleasure is the natural end of sex, since pleasure is just as often—if not more so the natural outcome of sex. A similar point can be made with respect to teleological claims about the body—who is to deny that a mouth functions very well for the purposes of kissing, licking, and other erotic activities like oral sex? Moreover, in the case of persons with disabilities who do not have acute sensation in their genitals, sex may look very different, involving other sensitive areas (in one man’s case, his thumb which, following a spinal cord injury, became as sensitive as his penis prior to his injury) (Porter 2013). Is it true that a thumb is

not meant for stroking or for sexual arousal? In many ways, the procreative view begs the question or assumes its own conclusion; it argues that a certain kind of sex is immoral because it is “unnatural” or lacks certain moral features (i.e., it is immoral because it is immoral).

Overall, the procreative view of sex is extremely strict and in many ways exclusionary of the very real diversity in human beings. It presumes certain facts about what is natural, (some of which is contentious in and of itself), and argues that this naturalness is good in light of it being natural. In many ways, the procreative view is too restrictive to the point where sex becomes a privileged practice only to be engaged in by certain individuals for one primary (and predetermined) purpose.

### **1.3.3 The Flourishing View**

With regard to the aforementioned views, both the hedonistic and procreative accounts conceptualize sex as *primarily* physical. My view, the flourishing view of sex, holds that sex offers physical, social and political goods. Moreover, my view is that sex is part of a flourishing human life. “Human flourishing” is a concept that I borrow from Martha Nussbaum, who, in turn, takes the concept from Aristotle. In his ethical and political theory, Aristotle refers to human flourishing (often used as a translation of the Ancient Greek *eudamonia*) as the ultimate goal of a human being (Nussbaum 2011, 125-6).

Evidently, sex is inherently physical—this is noted in both the hedonistic and procreative views. Part of the disagreement between the two views involves the significance or purpose of sex’s physical nature. On my view, sex is both potentially pleasurable and potentially procreative but it is not necessarily both or either in all cases or at all times. The primary significance in stating this is to simply establish that this is,

realistically, the case. In a more idealized sense, sexual pleasure is significant in a way that other physical pleasures are not. It has been argued that sexual pleasure is profound, and even life affirming (Tepper 2000). Moreover, sexual pleasure is both cathartic and deeply satisfying. The type of pleasure that sex provides is arguably deeper than many other types of physical pleasures such as massage or a satisfying meal. In terms of procreation, the fact that some sexual acts have the ability to result in human life is miraculous in its own way. Furthermore, some persons with mobility impairments have explained that sex can promote increased mobility or placate uncomfortable muscle spasms (Scott 2012).

I will not say much more here of sex's physical nature, as it needs little explanation. Before we continue, there is a point of clarification in order. There is a tendency in discussions of sex to downplay or avoid serious consideration of pleasure<sup>7</sup> (as Goldman seems keenly aware of and reacts against). In other words, there is an inclination to speak of sex in refined or over-intellectualized ways or to insist that it serves a more "noble purpose" (beyond pleasure). This is not my intention here. Fully acknowledging sexual pleasure is a very important part of understanding sex more generally. Pleasure ought to be situated as one of the key components of sex, where aspects of intimacy and connection are equally acknowledged.

As indicated, sex is not only inherently physical, but also inherently social in its manifestation. In other words, sex transpires as a joint effort or collaboration between people, much like conversation, dancing or any other social activity.<sup>8</sup> The collaborative

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<sup>7</sup> This has been noted in some of Mitchell Tepper's work, especially in his article "Sexuality and Disability: The Missing Discourse of Pleasure."

<sup>8</sup> On this view, sexual activity without the social aspect is masturbation.

component of sex suggests a certain level of reciprocity involved: partners ought to take each other's pleasure and desire into account in a crucial way (i.e., sex with a selfish partner is not typically enjoyable). Furthermore, sex also involves aspects of connection and intimacy in its close and personal nature. Even if sex takes place between two people who do not know each other very well, these social aspects still stand, i.e., two people need not be well acquainted to experience the intimacy or connection involved in sex.<sup>9</sup> On that note, there is something socially unique about sex in that it has the potential to familiarize people with one another faster than many other social activities of the same length. Sex makes available a way of knowing someone that is raw and unique—a way that not everyone has the privilege to experience with that person. This concept is well illustrated by Jacqueline Fortunata's piece distinguishing between two kinds of lovers, the "artistic" and the "scientific." Of the former she writes,

The artistic inquirer sees a partner as a particular individualized human being. This lover is fragrant, attractive, responsive, has a particular shape, color, texture, taste, and inspires in me various emotions such as fear, hope, joy, sorrow, aversion and desire. This particular lover responds and reacts to me in his or her unique way. I have a relationship to this person that I have with no other. I respond to this person in a way I respond to no other. (Fortunata 1980, 395)

In this illustration, sex is a unique kind of exchange that these two persons share, regardless of how well they know each other or how many people they have sex with. This depiction emphasizes a certain aspect of personal appreciation for one's partner in sexual exchanges. With this in mind, one of the moral boundaries of sex involves the depersonalization of one's partner (or oneself). When sex becomes "a robot-like sequence of movements, a reflex activity without reciprocity or mutuality" (Braun, *et al.* 2003,

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<sup>9</sup> We may also note that sexual intimacy changes or develops depending on familiarity and other related factors.



239) something of value is lost. Fortunata explains a similar idea of the “scientific lover” as someone who treats his/her partner as “machinery” to be acted upon. This lover only focuses on what all partners have in common (e.g., breasts, mouth, genitals), and not the unique qualities, desires or responses of individual partners (Fortunata 1980, 394). As I have indicated, as an intimate social act sex requires a certain level of respect for one’s partner and his/her subjectivity.

With respect to political goods, sex (and by extension, sexuality) contributes to one’s identity in a significant way. Moreover, sexuality often overshadows many other identities a person may have. For example, in the way a young woman may try to demonstrate that she is “adult” or “mature,” it is not through her intellectual prowess, emotional maturity or money-management skills, but often through her *sexual* liberty or freedom.<sup>10</sup> In a more comprehensive sense of political identity, sexual agency or identity may affirm inclusion in the “human community” (Siebers 2012, 41). That is, sexuality is deeply and uniquely human, and participation in sex is something we seem to value for reasons outside of the sexual acts themselves.

In the first sense of identity, Chris Cuomo advocates for homosexual rights and acknowledges the difference between sexual identities (e.g., homosexual, heterosexual) and sexual acts. On her account, sexual acts enforce or affirm one’s sexual identity and this is significant in a similar way that religious acts may enforce or affirm one’s religious identity. For example, a Catholic affirms his religious identity by attending Mass and partaking in Communion every week. Similarly, a homosexual may affirm his identity by engaging in homosexual acts. Cuomo writes, “Religious freedom, and

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<sup>10</sup> Whether this kind of sexual maturity or freedom can said to be genuine sexual maturity is debatable.

religious affiliation as a protected class, require the right to *do*, to affirm one's beliefs through appropriate actions, not simply the right to *be*" (Cuomo 2008, 247). In other words, it is not enough to have rights to *be* homosexual, but to *do* or engage in homosexual acts. In more general terms, someone who considers herself a very sexual person may desire and engage in frequent sex not only for its physical and social goods, but to affirm that *she is* sexual, and this is a valued facet of her identity.

Furthermore, sex allows persons to learn not only about one's own sexual identity, but is also an opportunity for persons to learn about the sexual identities of others. In this way, Fortunata has argued that sex is a process of inquiry and coming to know (Fortunata 1980). As I mentioned earlier, there is significance in the relationship between sexual identity and inclusion in the human community. When someone is regarded as asexual, this may seem indicative of a more significant difference than other kinds of dissimilarities among individuals. For example, if a born-and-raised Canadian doesn't enjoy hockey in a community of avid hockey fans, though this might be regarded as odd, this difference does not have the same kind of bearing as if someone were regarded as asexual.<sup>11</sup> For instance, often persons who may be regarded as asexual<sup>12</sup> (perhaps unjustly) are seen as outside the "norm": e.g., children, the elderly, those who are sick or terminally ill, and as I will discuss further, persons with disabilities. As Mark O'Brien, a disabled writer who lived with polio, described after his first session with a

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<sup>11</sup> There might be similarities to be drawn around androgynous individuals—oftentimes we may try to discern one's gender (perhaps unconsciously) despite ambiguities so that we can determine how to relate to them.

<sup>12</sup> Asexuality is now becoming recognized as a legitimate sexual identity (AVEN 2012). In this way, some disabled persons might identify as asexual. Alternatively, this identity might be something of an adaptive preference due to the realities of sexual exclusion. In this way, a disabled person might identify as asexual, but this would be different from identifying as asexual in the way that someone might legitimately identify as homosexual.

sex surrogate,<sup>13</sup> sex allowed him to feel included in the “world of adults,” something he had always felt excluded from prior to any sexual contact (O’Brien 1990). Similarly, disability theorist Tobin Siebers has posed the question, “What is it about sex that bestows human status?” (Siebers 2012, 41). Though I do not have a clear answer to Siebers’ question, I am equally compelled to think that there is some fundamental connection between one’s sexuality and one’s humanity.

The final feature of the flourishing view I will discuss is the importance of sexual responsibility. I find that this is one aspect of sex that is often covered in the catchall phrase, “sexual health.” This, of course, only covers the physical aspects of sex, which is insufficient, given that I have argued that sex has other essential social/emotional and political aspects. Under the flourishing view of sex, sexual responsibility pertains to the physical, social/emotional and political. With respect to the physical, one ought to protect oneself and one’s partner(s) from potential hazards such as sexually transmitted infections (STI’s) or unwanted pregnancy, whether this is through the use of contraceptives, periods of abstinence, or creativity in one’s use of outercourse.<sup>14</sup> Furthermore, one ought to be able to maintain a level of open dialogue with partners about these issues. With respect to the physical, sexual responsibility also means taking accountability for one’s own pleasure. For example, if a partner does something that one finds uncomfortable or unpleasant, one ought to communicate desires and preferences to one’s partner.

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<sup>13</sup> A sex surrogate is a kind of sex therapist who is referred to a client through a talk-therapist. A surrogate uses hands-on techniques and engages in sexual activity with a client in order to help them overcome sexual difficulties. (To be discussed further in chapter three.)

<sup>14</sup> “Outercourse” is non-penetrative sex, and may involve a variety of other sexual activities.

In terms of responsibility in the social aspects of sex, one must take into consideration one's partner; his/her pleasure, desires, preferences, comfort zone, subjectivity, feelings, and so forth. One ought not take advantage of a partner if one is aware of some asymmetry between them. For example, if Jones has sex without much emotional attachment, but knows or suspects that Smith places much more emphasis on emotional attachment in sex, this is definite ground for discussion between them. Moreover, one ought not objectify one's partner or oneself in sex—this would be to close off the social aspect of sex.

With regard to responsibility in the political aspects of sex, such as identity or community with others, one ought to be respectful of the sexual identities of others, regardless of differences. (For example, the slurs such as “slut,” “fag,” or “prude,” come to mind.) People express and experience their sexuality in very different ways; this is a part of human diversity. Being sexually responsible means not only being respectful of one's partner(s) and oneself but also being respectful of the sexualities of others. If one is sexually active, I maintain that one ought to be capable of taking responsibility for their sexual choices and being respectful of others'.

This concludes my overview of the flourishing view of sex. I have described the ways in which I think sex has physical, social/emotional and political goods; moreover, I have emphasized the importance of sexual responsibility to a comprehensive view of sex and sexuality. In this way, the flourishing view more adequately captures the value and significance of sex, including the various forms it can take.

#### **1.4 Disability and Sexual Exclusion**

Though we can acknowledge that justice is abstract—and though we may disagree on how it is best characterized—we can agree that it is absolutely fundamental. Moreover, one of the aims of justice is to provide access to goods and opportunities that are necessary for leading good lives. With the flourishing view of sex in mind, we can see the ways in which sex is a deeply important human good and contributes to a good human life. Moreover, as I explain in the following subsections, members of the disability community have been systematically denied opportunities for sexual experiences. In other words, many disabled people are denied access to this significant human good and this is an injustice. As Teela Sanders notes, “Persons with disabilities struggle to access the familiar social environments that enable sexual expression, sexual opportunities and relationship building” (Sanders 2007, 443).

On my view, a theory of justice ought to both recognize the multifaceted nature of sexual goods and be able to accommodate them. Where other multifaceted goods, such as education or familial/kinship ties are recognized as human goods by theories of justice, the sexual goods (e.g., pleasure, intimacy, connection and identity) are not. I discuss theories of justice in further detail in the next chapter, and in the following subsections, I detail some of the ways that sexual exclusion of members of the disability community is perpetuated. Bear in mind that the perpetuation of sexual exclusion is a complicated matter with many contributing factors, which I discuss throughout this project. Despite the complex nature of the problem, I also maintain that it is something that can be properly addressed, given the right approach.

### 1.4.1 Narrow Views of Sexuality

Beyond the general misconceptions that persons with disabilities are “asexual,” have no interest in sex, or are not capable of having sex, there may be seriously limited views about what sex entails. Normative sexuality enforces a kind of restricted or “distinctive mapping of the body into limited erogenous zones” (Siebers 2012, 47). With respect to heterosexual intercourse specifically, penile-vaginal penetration is often regarded as “the real thing” (Kroll & Klein 1992, 51). Thus, if a disabled man is incapable of having or maintaining an erection (or has no sensation in his penis), some might assume this would render him asexual. Similarly, some disabled women may experience little or no feeling vaginally, or may not experience pleasure during vaginal intercourse. Certainly genitals are not the only locus of sexuality, though they may often be regarded as such. Not only are many other body parts sensitive and receptive to sensual or sexual touch, but in some cases of disability, other (seemingly non-erogenous) body parts will be or will become extremely sensitive. In some cases of spinal cord injury, individuals will describe an intense sexual sensitivity close to the area where they are paralyzed. (For example, if someone is paralyzed from the waist down, they may have extreme sensitivity just above the waist.) In other cases, following spinal cord injury, some may experience intense sexual feeling in a thumb, tongue or nipples (85).

In a similar vein, some report having intense “mental” orgasms or “full-body” orgasms even when physical orgasms are no longer possible in the usual sense (Siebers 2012, 49). With respect to homosexual or queer sex, one lesbian amputee claims that her “leg stumps make fabulous sex toys [and that her] amputated body is tailor-made for lesbian sex” (50). Clearly the body is very sexually adaptable and, moreover, “while

certain aspects of the body are not open to transformation, sexual desire and erotic sensation are remarkably flexible” (47).

On the subject of sex and timing, there is a prevalent cultural idea around sex and spontaneity. As Tobin Siebers writes, “The myth that sex must be spontaneous to be authentic does not always make sense for people who live with little privacy or whose sexual opportunities depend on making arrangements with personal attendants” (49). Often, disabled people require advanced planning about sex. In a sex and disability guidebook, the authors note these kinds of considerations, reminding readers to “remove from the night table the rows of prescription medicines that are so often part of the life of a person with a disability” (Kroll & Klein 1992, 52) and providing tips like: “Water beds have also proved excellent for prevention of pressure sores” (59). The thing to bear in mind with respect to sex and disability seems to be creativity and openness to experimentation. As Siebers writes, “A crucial consideration for people with disabilities is not to judge their sexuality by comparison to normative sexuality but to think expansively and experimentally about what defines a sexual experience for them” (Siebers 2012, 49).

#### **1.4.2 Division Between Public and Private Sphere**

Another way the sexual exclusion of persons with disabilities is perpetuated is in the distinction between public and private spheres, and the view that sex is strictly private. In other words, sex is generally understood as a private issue (not a public matter that the state ought to have any business in). While there may be public services like sexual health centers, access to contraception, abortion, and some modest sexual education, the quality of an individual’s “sex life” is left up to them. However, this mentality hinders

disabled citizens, who *do* require assistance to facilitate sexual opportunities. On that note, the concept of a “sex life” has been criticized by Siebers for being ableist and assuming a level of ability, control and assertiveness over one’s sexual opportunities. He writes,

The concept of a sex life encapsulates many of the ways in which the ideology of ability distorts current attitudes about sexuality. [...] A sex life must be, first and foremost, a healthy sex life, and the more healthy a person is, the better the sex life is supposed to be. Whence the imperative in today’s culture is to “work on” one’s sex life, to “improve” or “better” it, [...] to “spice it up” – all for the purpose of discovering “the ultimate pleasure.” (Siebers 2012, 42)

On the other hand, when disability *is* associated with sex, it becomes a clinical or medical matter wherein “disability betrays a particular limitation of sexual opportunity, growth or feeling” (42). On that note, Siebers also argues that group homes or long-term care facilities “purposefully destroy opportunities for disabled people to find sexual partners or to express their sexuality” in that there is no functional privacy,<sup>15</sup> or the staff may not allow renters to be alone with anyone of sexual interest in his/her room (45). Moreover, Siebers notes that staff may be able to make decisions about access to erotic literature, masturbation, and so on. Overall, many disabled people experience a degree of outside control when it comes to sexuality, either through medicalization or other restrictions. Siebers notes, “Personal choice and autonomy are constitutive features of the private sphere, but once subjected to [things like] medicalization, individual preference and self-determination evaporate” (46).

In many ways social institutions promote and support certain lifestyles choices or pursuits, such as (a degree of) education, marriage and family. For instance, in choosing

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<sup>15</sup> Note that although a degree of privacy is important to sexual intimacy, this does not mean that access to sexual opportunities should be treated as a private matter and not a public concern.



to pursue higher education, I have been afforded financial support by both the university and the government (through scholarships, bursaries, and loans free of interest); I am also frequently given concessions for being a student (e.g., “student discounts”) be it for Internet service, haircuts or airplane tickets. By contrast, social institutions do not support or promote sexual opportunities for individuals who face substantial obstacles to them. In fact, quite the contrary: disabled people often experience degrees of outside control and humiliation with respect to their sexuality, if it is acknowledged at all.

In the foregoing, I have explained that sex is a deeply valuable human good that is important to a flourishing life. In order for social institutions to recognize this, it is essential that we reform our way of thinking about sex, disability and, as I discuss in the next chapter, justice. Currently, the sexual exclusion of the disabled community is not regarded as a legitimate issue of justice, though I maintain that it is.<sup>16</sup>

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<sup>16</sup> Note that the major theorists of justice (i.e., Rawls, Dworkin, Nozick) do not talk about sex, or discuss how it is relevant to justice.

## Chapter 2

### 2.1 Introduction

When members of the disability community have been considered subjects of justice in the past, it has generally pertained to issues of employment, transportation, housing, and other related concerns. Tom Shakespeare has attributed this to the prioritization of “basic needs” as he writes, “Ending poverty and social exclusion comes higher up on the list of needs, than campaigning for a good fuck” (Shakespeare 2000, 160). However, a good fuck, to use Shakespeare’s phrasing, *is* an important part of the human good and to be systematically denied opportunities for sexual flourishing is an injustice. Of course, what is at issue here is what we believe justice to entail, and how we understand its role in society. In what follows, I discuss Rawls’s theory of justice and a capability approach to justice. It is my contention that, given the right theory, we can understand the sexual exclusion of persons with disabilities as wrong because it deprives individuals of an integral element of a flourishing human life.

### 2.2 Theories of Justice

We begin our discussion with Rawls’s theory of justice. This is my starting point because his theory is one of the most widely known and highly regarded among Western theories. Rawls’s establishment of justice as fairness provides a comprehensive articulation of liberal egalitarian values, with which to understand justice in societies. He writes,

[L]aws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. Each person possesses an inviolability founded on justice that even the welfare of a society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by a

greater good shared by others. It does not allow the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many. (Rawls 1999, 3)

However, Rawls's theory will ultimately prove to be unsuitable for addressing issues of disability and sexual exclusion because there is no way to properly frame the issue as a real problem. Alternatively, with the use of the capability approach, we are able to more appropriately frame these issues.

### **2.2.1 Rawlsian Justice**

Rawls's theory of justice is an attempt to provide a systematic alternative to utilitarianism (as suggested by the passage above).<sup>17</sup> His aim is to answer the question of how social institutions should be structured so as to represent the fair terms of cooperation (Rawls 1999, 10).

Rawls uses the device of a hypothetical contract, where parties are to agree to the terms of just societies. Part of this device involves the use of what Rawls calls the original position (OP). In the OP, parties are behind the veil of ignorance and therefore do not know their talents, their conception(s) of the good, socio-economic statuses, etc.<sup>18</sup> This is intended to be a fair procedure for determining what the principles of justice should be. Moreover, Rawls holds that we are all free and equal persons, and the individuals in the OP assume this as well (Rawls 1999). The task of the individuals in the OP is to choose principles of justice that will regulate the distribution of primary goods. Individuals in the OP seek conditions that enable them to exercise and develop their moral powers: their rational capacities to form, revise and pursue a conception of their

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<sup>17</sup> The aim of utilitarianism as a theory of justice is to distribute resources and opportunities in such a way that maximizes the overall happiness or wellbeing of the total population. In this way, the interests of the group override the interest of the individual.

<sup>18</sup> Level of ability/disability is not one of the things someone in the original position would know—Rawls sets aside questions of disability to be addressed later in his theory.

good, and their capacity to be reasonable and to have a sense of justice. These are the “higher-order interests” individuals in the OP aim to promote.

To illustrate Rawls’s initial choice situation, imagine Smith. Smith is in the original position and thus is unaware of his place in society. Like the other individuals who are in a similar state of ignorance, Smith is motivated only by his rational self-interests (Rawls 1999, 11). In the OP, individuals agree on primary goods—things that enable us to exercise our moral powers. The primary goods as listed by Rawls are: (i) basic rights and liberties such as freedom of thought and liberty of conscience, (ii) freedom of movement and free choice of occupation, (iii) powers and prerogatives of offices and positions of authority, (iv) income and wealth, and (v) the social bases of self-respect (79-80). These primary goods are the all-purpose goods that enable individuals to exercise the two moral powers and pursue conceptions of the good. For example, whether Smith discovers (outside of the OP) that he is Jewish, homosexual, or a musician, the social primary goods are things he would value regardless of religious affiliation or sexual orientation.

### **2.2.1a Critique**

With the basic structure of Rawls’s theory laid out, we can see that there is no immediately obvious way to address issues of disability and sexual exclusion within a Rawlsian framework for a few reasons. First and most obviously, Rawls does not provide any mention of sex as a primary good, or even as a basic interest that people have. His assumption would likely be that individuals could use the primary goods to decide for themselves what kind of sexual lives to pursue. However, this assumes a certain level of autonomy and control over one’s sexual opportunities that many disabled people do not

have. Moreover, this ignores the background social conditions that marginalize disabled people as sexual partners. Sexual exclusion is not considered a relevant matter of justice for Rawls because he assumes that people with a fair share of the primary goods would be able to pursue their own personal projects and conceptions of the good. While this might be plausible for some non-disabled persons who do not face systematic obstacles to sexual intimacy, many disabled people do not have this degree of control and independence over their sexual lives (as noted by Tobin Siebers in the previous chapter).<sup>19</sup>

On a related note, the primary goods as means to pursuing individual conceptions of the good are not sensitive to the requirements of different individuals and their specific needs or abilities. As Amartya Sen has noted,

[T]he primary goods approach seems to take little note of the diversity of human beings. [...] If people were basically very similar, then an index of primary goods might be quite a good way of judging advantage. But, in fact, people seem to have very different needs varying with health, longevity, climatic conditions, location, work conditions, temperament, and even body size. [...] So what is being involved is not merely ignoring a few hard cases, but overlooking very widespread and real differences. (Sen 1980, 215–216)

In other words, we all differ in our capacities to convert means (primary goods) into valuable ends (good lives). To illustrate, a wheelchair user and able-bodied person may be equal in terms of income and wealth. On Rawls's view, these two would be considered equally advantaged in virtue of the primary goods. However, this overlooks the

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<sup>19</sup> Someone who is sympathetic to the Rawlsian project might say, “although Rawls may not have realized that sex is a primary good, obviously there is reason to incorporate sex in the list of primary goods.” However, this would not work for a couple of reasons. Firstly, institutions must be able to distribute the primary goods (i.e., such as income and wealth) and we cannot really do this with sex. Secondly, I am not saying that each and everyone should be having sex—it is the opportunity to pursue sex (as a human function) that I deem valuable.

challenges the wheelchair user may face with respect to the accessibility of public space.

As Martha Nussbaum notes,

No matter how much money we give the person in the wheelchair, he will still not have adequate access to public space unless public space itself is redesigned. Maybe a very rich person could afford a full-time chauffeur and a set of bearers who could carry him up the stairs of rampless buildings. But even if making people with impairments that rich were a sensible goal of public policy, as it is not, we would still have not gotten to the root of the matter, which is that this person should not *have* to rely on a chauffeur or on bearers. [...] The redesign of public space is essential to the dignity and self-respect of people with impairments. (Nussbaum 2006, 167)

In this way, the primary goods are not especially sensitive to certain relevant features of individual ability and thus, primary goods as means for pursuing a good life will not have the same effectiveness for all individuals.<sup>20</sup> Note that the limitation of Rawls's theory is not necessarily around issues of distribution; my concern is around the adequacy of the primary goods focus to capture sexual exclusion as a relevant problem.

Additionally, if Rawls assumes that a disability (and its associated difficulties) is *wholly* a result of individual biology, then he may have no reason to be attentive to issues of disability which can be socially addressed. It appears that Rawls assumes a medical model of disability, which understands "disability as a physical or mental impairment of the individual and its personal and social consequences. It regards the limitations faced by people with disabilities as resulting primarily, or solely, from their impairments" (Wasserman, *et al.* 2013). In other words, the medical model places the disadvantages of a disability squarely on the individual by holding them to a particular societal standard. To characterize disability as purely a challenge at the individual level is inaccurate because we know that many of the challenges are *social* and thus can be addressed

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<sup>20</sup> The metric of primary goods commits us to comparing those with an equal share as equally advantaged from the point of view of justice and this metric can misidentify individual standing.

socially. We also know that it is possible to make public space accessible to individuals with a variety of impairments, and thus ensure social integration. As David Wasserman has suggested, “Perhaps it would be useful to start asking not about the resources necessary for functioning in a society but instead about the activities that are essential or valuable for social participation and individual flourishing” (Wasserman *et al.* 2013).

### **2.2.2 The Capability Approach**

The capability approach (CA) is a theoretical framework about justice and wellbeing, developed by economist Amartya Sen and philosopher Martha Nussbaum, with roots tracing back to Aristotle and Karl Marx. The CA is a multipurpose framework that claims that the freedom to achieve wellbeing is a matter of what people are able to do and to be (Robeyns 2011). For the purposes of this project, I adopt a general capability approach and discuss elements of both Sen and Nussbaum’s formulations, with reference to Ingrid Robeyns, a proponent of the approach.

For various reasons, the CA is more adept than Rawls’s theory to address issues of disability and sexual exclusion as a matter of justice. Before I explain how the CA does this, I will first provide an overview of the approach. As Robeyns explains,

The core claim of the capability approach is that assessments of the well-being or quality of life of a person, and judgments about equality or justice, [...] should not primarily focus on resources, or on people’s mental states, but on the effective opportunities that people have to lead the lives they have reason to value. (Robeyns 2006, 351)

In this way, the CA indicates the kind of information we should look at if we are to assess how well off someone is in his/her life. As the passage above indicates, instead of focusing on subjective categories (like happiness) or material means to wellbeing (such as income and wealth), the CA claims that human capabilities are the proper metric to

focus on, where capabilities are understood as opportunities to achieve human functionings.

Functionings are one's beings and doings, or the various individual states or activities one can partake in. For example, Jones can be well-nourished, educated or literate (examples of beings) and can travel, work, and vote in an election (examples of doings). Moreover, though some functionings can be "univocally good (e.g., being in good health) or univocally bad (e.g. being raped) [...] the goodness or badness of various other functionings may not be so straightforward, but rather depend on the context and/or the normative theory which we endorse" (Robeyns 2011).<sup>21</sup>

On the capability approach, making judgments about justice are done in terms of a person's real opportunity to achieve functionings (also known as capabilities). Moreover, capabilities are seen as intrinsically valuable and not merely instrumentally valuable (such as income or wealth). In terms of sex, having sexual experiences would be a functioning, while having a real opportunity for sexual experiences would be the corresponding capability. One of the reasons the approach distinguishes between functionings and capabilities is so that we do not privilege a particular account of good lives, but instead aim at a range of possible ways of life from which people can choose (Robeyns 2011). Moreover, Sen distinguishes that there may be "refined functionings" to designate a functioning that takes note of other available alternatives. For example, "fasting" as a functioning is not just starving it is *choosing to starve when one does have other options*" (Sen 1980, 52). In this way, one may have the capability to be well

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<sup>21</sup> The example Robeyns gives is the care work of a mother who cares full time for her child. She notes that a conservative-communitarian normative theory would likely deem this a valuable functioning, whereas a feminist-liberal theory will only do so if the care work is the result of an autonomous choice on the part of the mother who has other equal opportunities, etc.



nourished, but may *choose* to fast as an important part of one's way of life. This example illustrates one of the reasons why it is the capability that we focus on when making judgments about justice, as opposed to actual functioning.

The CA also emphasizes the importance of functionings as constitutive of a person's being. Nussbaum argues that a life worthy of human dignity "has available in it 'truly human functioning'" (Nussbaum 2006, 74). What this means is "one cannot be a human being without at least a range of functionings" they make the lives of human beings both *lives* [...] and *human*" (Robeyns 2011).

Nussbaum also provides a list of Central Capabilities, ten capabilities which are necessary for a "minimally flourishing life." The list is as follows:

- (i) **Life:** Being able to live to the end of a human life of normal length; not dying prematurely, or before one's life is so reduced as to be not worth living.
- (ii) **Bodily health:** Being able to have good health, including reproductive health; to be adequately nourished; to have adequate shelter.
- (iii) **Bodily integrity:** Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; *having opportunities for sexual satisfaction* and for choice in matters of reproduction.
- (iv) **Senses, imagination, and thought:** Being able to use the senses, to imagine, think, and reason—and to do these things in a "truly human" way, a way informed and cultivated by an adequate education [...] Being able to use imagination and thought in connection with experiencing and producing works [...] Being able to use one's mind in ways protected by guarantees of freedom of expression [...] *Being able to have pleasurable experiences* and to avoid nonbeneficial pain.
- (v) **Emotions:** Being able to have attachments to things and people outside ourselves; to love those who love and care for us, [...] in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one's emotional development blighted by fear and anxiety. [...]
- (vi) **Practical reason:** Being able to form a conception of the good, and to engage in critical reflection about the planning of one's life. [...]
- (vii) **Affiliation:** (A) Being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction [...] (B) Having the social bases of self-respect and

- nonhumiliation; being able to be treated as a dignified being whose worth is equal to that of others. [...]
- (viii) **Other species:** Being able to live with concern for and in relation to animals, plants, and the world of nature.
  - (ix) **Play:** Being able to laugh, play, to enjoy recreational activities.
  - (x) **Control over one's environment:** (A) Political. Being able to participate effectively in political choices that govern one's life [...] (B) Material. Being able to hold property [...] and having property rights on an equal basis with others; having the right to seek employment [...]
- (Nussbaum 2011, 33; emphasis added)

Note that Nussbaum gives some mention of sexuality in (iii) and this could presumably be extended to part of (iv). Moreover, the flourishing view of sex that I outline could be extended to include other capabilities in Nussbaum's list. For instance, the physical/pleasurable aspects of sex relate to (iv) senses, and arguably (ix) play. Reproductive aspects of sex are related to (ii) bodily health and (iii) bodily integrity in the list. The intimate and social aspects of sex are related to (v) emotions and (vii) affiliation. Finally, the political aspects of sex are related to (vi) practical reason in the way that one may form a conception of a good life as involving sexual opportunities, as well as (x) control over one's environment in a political sense—forming a sexual identity or personality. Evidently, sex can play an important role in allowing individuals to realize many aspects of the Central Capabilities. If we subscribe to Nussbaum's list, we are endorsing a “thicker” theory of the good than Rawls does. We agree that there are some opportunities that are essentially valuable to achieving a flourishing life. Notably, the list of Central Capabilities is not a fixed list, as Nussbaum herself admits that it may be subject to changes, additions, subtractions, etc.

As I've established how and why sex fits better with the capability approach over a Rawlsian view,<sup>22</sup> I will explain how the approach is also better able to incorporate members of the disability community. One important fact that the CA takes into account is the reality that people differ in their ability to convert means into functionings. For instance, two people with similar quantities of resources (i.e., income/wealth) may differ greatly in what they are able to achieve. This is illustrated in Nussbaum's example of the wheelchair user and the inadequacy of wealth as a metric of justice. Even if a person in a wheelchair may have the same income as an able-bodied person, they may still be unequal in capacity to move from place to place (Nussbaum 2006, 164). Similarly, Robeyns outlines the case of a starving person: though food may be abundant in a village, the starving person may have no money or no legal claim to the food, or no way of preventing internal parasites from consuming it before she does. In this case there are at least some resources (food) available, but the starving person will still be malnourished (Robeyns 2011).

In this way, it is not enough to ask if individuals have the means to convert resources into valuable opportunities or outcomes. We must also focus on the ends when thinking about individual wellbeing and quality of life (Robeyns 2011). As Robeyns explains, "Means can only work as reliable proxies of people's opportunities to achieve those ends if they all have the same capacities or powers to convert those means into equal capability sets" (Robeyns 2011). However, in reality, this is not the case. People will differ greatly in their ability to convert certain means into valuable ends. This is

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<sup>22</sup> Some Rawlsians might argue that the two frameworks complement one another, and are not strictly alternatives. It is possible to make the difference between the primary goods and capabilities less stark. However, the more we might adjust and modify primary goods, the further we may depart from the original Rawlsian idea of primary goods.

particularly relevant in discussions of sex and disability, because persons with disabilities will differ in their opportunities for sexual experiences.

### **2.2.2a Considerations**

One problem with using the capability approach to address issues of disability and sexual exclusion as a matter of justice is that the CA is not a full theory of justice. It is a theoretical framework that we can use to determine a proper *metric* of justice. In order for the CA to be a full theory of justice it must “explain on what basis it justifies its principles or claims of justice” (Robeyns 2011). For example, Rawls justifies his principles with the use of his thought experiment and the use of the original position. Nussbaum refers to the idea of human dignity and a life that has in it truly human functioning. I subscribe to this idea to some degree. However, it is somewhat misleading that human dignity (as related to a life with human functioning) is the basis for our claims of justice because we do not use functionings as a metric of justice, (but rather the *opportunity* to realize these truly human functionings). With respect to sex, this seems most appropriate, as I am not advocating that each and every person should effectively be having sex, but it is the opportunity, or capability, that I find valuable.

Additionally, the capability approach does not specify criteria for distribution. For instance, “will it argue for plain equality, or for sufficiency, or prioritarianism, or for some other (mixed) distributive rule?” (Robeyns 2011). For our purposes, and in terms of sexual opportunities, I believe a mixed distributive rule would be most suitable. Persons with disabilities should have the freedom and opportunity to meet and choose sexual partners, whether those partners are from the disabled community, the nondisabled community, the queer community, and so forth. Ideally, persons of any ability would

have (relatively) the same degree of opportunity in sexual matters as any other person. In this sense, I advocate for a degree of egalitarianism. However, the degree to which *any* individual is able to choose sexual partners will naturally depend on other factors, such as sexual attractiveness. For example, in some trivial sense, George Clooney will have many more opportunities in terms of sexual partners than the Average Joe. Similarly, it would be unreasonable to expect that all persons should be able to have unlimited sexual access, as this is simply not the way life is. For instance, if someone is in a committed monogamous relationship, one's sexual opportunities will be restricted to the combined preferences of oneself and one's partner. Yet this is not an injustice—it is simply a facet of sex's social nature and the fact that it also depends on other people.

### **2.3 Sex and Disability: Issues of Access**

In the previous chapter I addressed certain conceptual obstacles that contribute to the sexual exclusion of persons with disabilities, such as narrow views of sex and the division of the public and private spheres. In the following section, I address sexual exclusion as an issue of access. This may have a variety of meanings, but in particular I refer to the access (or lack thereof) to the opportunities for sex—or the capability of having sexual experiences.

The first thing we must ask ourselves is what sex requires in order for it to occur—this may strike us initially as a funny question to ask as the answer may seem glaringly obvious in one sense. However, there are at least four elements necessary for sexual opportunities to be realized. These are as follows:

- (i) Information and resources. This may pertain to things like access to information about sex, or sexual health resources like contraceptives, appropriate sexual health care, and related needs.
- (ii) Privacy and respect. Some degree of privacy is needed for sex. Granted, the degree to which this is required differs based on personal preference or living arrangement. In terms of respect, I mean this in a very broad sense to include respect from partners, as well as outside parties; respect for privacy and choices.
- (iii) Autonomy and choice. A degree of autonomy and freedom to make one's own sexual choices.
- (iv) Sexual partner(s) and being regarded as a sexual equal. This may mean opportunities to meet potential sexual partners, or the opportunity to be regarded as a sexual partner.

As I illustrate in the following sections, disabled persons often lack access to some or all of these elements and this comprises the issue of sexual access.

### **2.3.1 Information/Resources**

The way that spaces are designed have a substantial impact on sexual opportunities for disabled people. For example, inaccessible sexual health clinics might include anything from limited access to information, services, or the clinics themselves (Anderson &

Kitchin 2000). In one instance, Caroline, a disabled woman explains:

I stopped going to the family planning clinic because I felt so out of place. The waiting room was always full of “young girls”, and I felt conspicuous with my sticks (I couldn't go in my wheelchair because the ramp was too steep!). I usually feel strong as a disabled person, but hospitals and health centres have an adverse effect. (Anderson & Kitchin 2000, 1166)

Anderson and Kitchin argue that “the ways in which space is organized [...] reproduce[s] dominant cultural ideologies and exclude[s] certain social groupings” (1166). In the case of inaccessible sexual health centers, the implication is that disabled people are not sexual, and thus have no need for sexual health services. Moreover, Anderson and Kitchin note that, because sexual health is regarded as an intensely private concern, “a core concept of family planning [...] is to provide private spaces such as consultation rooms for client and service provider to talk and carry out examinations” (1167). However, such private spaces may not be available to disabled patients, as one UK study notes, “[D]isabled women tend not to have Pap smears largely due to inaccessible doctor surgeries” (1167-8). And evidently, this relates to the next issue of access.

### **2.3.2 Privacy/Respect**

Another study (Lemieux *et al.* 2004) found that individuals in palliative care experienced various institutional barriers to sexual opportunities. Though palliative care does not necessarily pertain to disabled people, many of the claims are equally applicable to persons with disabilities who live in care facilities or group homes (as opposed to those who live independently).<sup>23</sup>

These barriers included: lack of privacy, shared rooms with other patients, uninviting physical space, intrusion by staff and the size of beds (Lemieux *et al.* 633). Respondents suggested that having larger beds (so couples could lie down together, even for a nap) or a private family hour where no medication or tests are administered would greatly improve one’s quality of life in care facilities. One patient explained that the level

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<sup>23</sup> The reason I have used studies that look at palliative care and other assisted living facilities is because there is a lack of literature which discusses issues of sex/sexuality that disabled people experience while living in care facilities or group homes. What little information is available seems to focus mainly on sexual abuse of disabled people living in these facilities (Sobsey & Doe 1991).

of privacy at the hospital where he stayed was so low that there was no place for him to speak with his wife one on one: “I think that had an effect on us,” he claims. His wife adds, “He didn’t feel safe. A nurse could walk in at any time,” (633). Here we can see that even married couples lack opportunities for intimacy in medical care settings.

One might argue that this is simply the nature of medical care (or even group care), a patient’s health is the priority and this takes precedence over privacy and intimacy. It may be the case that medical care takes priority in some instances. However, sexuality is a very important aspect of a holistic approach to health. To disregard it or see it as negligible in health care settings is to deny a deeply important component of human flourishing. As another palliative care patient claims of intimacy, “[I]t’s more important to me than basically anything in life” (632).

In other cases of care facilities, one study found that care staff were critical of resident sexual activity in that they used pejorative language to describe sexual activity or laughed at “unsuitable-looking couples and mental images of elderly partners engaging in sex” (Frankowski & Clark 2009, 32).

### **2.3.3 Autonomy/Choice**

People in assisted living<sup>24</sup> often experience a lack of autonomy in sexual matters. One study found that assisted living policies regarding sex among residents, though generally informal, were highly restrictive and even infantilizing at times in the way they placed limitations on resident activity (Frankowski & Clark 2009). For instance, caregivers were to report any intimate activity between the residents, residents were not to sleep in one another’s rooms, and in some cases families of residents have the power to “give

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<sup>24</sup> In referencing Frankowski and Clark’s study, I am not assuming that all or even most disabled people live in assisted living or care facilities. Rather, the study simply helps to flesh out the issues in clearer detail for the purposes of our discussion.



permission for their relatives to engage in sex” (or not) (31). In one case, a couple that formed while in assisted living eventually decided to cohabit. However, the man’s son was concerned about the arrangement and thus refused permission (31). In another case at a particular assisted living facility, two residents grew close and became recognized by the staff and other residents as a couple. Though the families knew of the relationship, the man’s children decided to move him to another facility. In the end, “they pulled their father out of the home without maintaining contact with his woman friend. The new residence did not permit telephones in the residents’ rooms, and the only phone available was located at the nurses’ station” (31). In these examples, the opinions or decisions of family members overrode the sexual autonomy of the residents.

#### **2.3.4 Sexual Partner(s) and Being Regarded as a Sexual Equal**

Lack of access to sexual partners (including opportunities to meet sexual partners, or contexts where one might be regarded as a sexual equal) is perhaps one of the fundamental issues with respect to lack of sexual access. Conceivably one could lack access to information, resources, respect from outside parties and a degree of privacy and yet if one has a sexual partner, all these other lacks would not prevent sex from happening. However, this is also one of the fundamental issues of sexual exclusion. As indicated in the previous chapter, there are multiple things that perpetuate sexual exclusion, one of the main causes being narrow views about sex. This combines with negative social attitudes around disability, as Tobin Siebers indicates:

Many people in the disability community are still waiting [...] to hear a story in which a man or woman who chooses to be lovers with a disabled person is congratulated by family and friends for making a good choice. What sea change in current scientific, medical, political, and romantic attitudes would be necessary to represent disabled sexuality as a positive contribution to the future? (Siebers 2012, 42)

Oftentimes disability is perceived by the mainstream as something inherently negative; in terms of sexual relationships, “disability signifies sexual limitation, regardless of whether the physical and mental features of a given impairment affect the ability to have sex” (Siebers 2012, 42).

In the foregoing, I establish sexual exclusion as an issue of justice, and this is best framed with the use of the capability approach. Moreover, I demonstrate that that sexual exclusion is perpetuated as a problem of access. Lack of sexual access means that one may be denied access to various factors necessary for sexual experiences. As I indicate, one of the most important factors for sexual experiences to occur is that of sexual partners, which may also pertain to opportunities to meet sexual partners, or opportunities to be seen as a sexual partner. Though we will all differ in our opportunities for sexual experiences, the degree to which members of the disabled community are denied the capability of sexual fulfillment is unjust.

## Chapter 3

### 3.1 Introduction

In the preceding chapters, I provide an overview of the problem of sexual exclusion.

There have been a variety of proposed solutions to this problem, which I consider in this chapter. These solutions generally involve some form of facilitated sex (which is sex with the assistance of a personal care aid, with the assistance of a nurse, or surrogate partner therapy) or commercial sex (sex with sex workers) as a means of mitigating sexual exclusion. Some of these solutions, particularly commercial sex—which is one of the most widely discussed proposals—imagines the sexual exclusion of persons with disabilities in relatively narrow terms in that they address only some of the sexual access issues (i.e., access to sexual partners).

It is my contention that we have reason to be receptive to some forms of facilitated sex and commercial sex as a way of promoting some sexual opportunities for persons with disabilities. However, in saying this, I also recognize that this is by no means a comprehensive solution, though it is a credible response to the social injustice of sexual exclusion. At the same time, we must bear in mind the complex nature of the problem and recognize that addressing only one aspect (i.e., providing access to sexual partners) cannot fully resolve the problem of sexual exclusion. Tobin Siebers has argued that disabled sexual citizenship includes “access to information about sexuality; freedom of association in institutions and care facilities; demedicalization of disabled sexuality; addressing sexual needs and desires as part of health care; reprofessionalization of caregivers to recognize, not deny, sexuality; and privacy on demand” (Siebers 2012, 47).

To extend Siebers' claim, I would suggest that it is the duty of others, not just caregivers, to recognize the sexuality of disabled persons. In this way, fostering sexual *inclusion* (and thus fostering sexual justice) requires the transformation of social attitudes around ideas of sex/sexuality and disability. Moreover, sexual inclusion/sexual justice requires us to address not just one issue of access (i.e., access to sexual partners), but *all* elements of sexual access as detailed in the previous chapter (access to information/resources, privacy/respect, autonomy/choice *and* sexual partners/opportunities to be regarded as a sexual equal).

One way of fostering sexual inclusion could be through the use of public advocates who are explicitly focused on issues of sex and disability, and actively work to promote the sexual interests of persons with disabilities. This might include education of the public, providing information and resources to disabled persons, facilitating discussion between a disabled person and his/her caregivers, etc. Notably, some sex work organizations, as I discuss further, do this kind of public advocacy in addition to connecting sex workers with disabled persons. This concept of public advocates is an integral part of social change and could conceivably be expanded to include more members of the disability community, as well as a wide variety of individuals from different communities.

### **3.2 Facilitated Sex**

The concept of facilitated sex has often been considered with regard to issues of sex and disability. This can have a variety of meanings and may depend on the specific context.

Generally, facilitated sex refers to sex with the assistance of a third party, or sexual therapy of some form with a nurse or surrogate partner.

Though facilitated sex has been met with different results, as I will illustrate, given certain conditions,<sup>25</sup> facilitated sex could certainly provide some positive sexual opportunities for disabled people.

### **3.2.1 Personal Care Assistant (PCA)**

Mitchell Tepper, a professional in the field of sex and disability, counsels disabled individuals and couples on issues of sexuality and facilitated sex. He details the following case:

Gerrad and Laurie<sup>26</sup> [...] developed an online relationship over a two-year period. Casual turned intimate, and intimate hot. After 24 months of mounting passion, they decided it was time to cross the digital divide and meet flesh-to-flesh. Their plan was to consummate their relationship in person.

After great anticipation, their dream of being together in the biblical sense was thwarted by the realities of their disabilities. Gerrad has a neuromuscular disease resulting in overall physical weakness. Laurie has quadriplegia. While she had enough biceps strength to help Gerrad get on top—the only position he can thrust from—they weren't able to position their body parts for intercourse. (Tepper 2012)

Tepper explains that, what the couple required from a personal care assistant (PCA) was help putting on a condom and positioning the two. Laurie was uncomfortable with asking a PCA for multiple reasons. Firstly, she disliked the idea of having a third person (likely a female PCA) involved in the couple's very intimate experience. Secondly, "broaching the subject seemed risky. She not only feared that her PCA might refuse, but that a positive reply would make their day-to-day working relationship awkward" (Tepper 2012).

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<sup>25</sup> (Conditions such as appropriate training for caregivers and personal care assistants, workers who are comfortable with and open to sexual facilitation, and a general sex-positive atmosphere.)

<sup>26</sup> Names have been changed.

Moreover, Laurie worried that Gerrard would enjoy the touch of the PCA as she positioned them more than he would take pleasure from being with her (Laurie). Despite these reservations, eventually Gerrard and Laurie were able to ask a PCA to help them. The PCA was understanding and willing to help. However, in practice, “the situation became too clinical for Gerrard. ...[H]e sensed awkwardness on Laurie’s part; he says he saw it in her eyes and felt the tension in her body. Concerned about her well-being, he was unable to maintain his erection” (Tepper 2012). Laurie expressed wanting an attendant who was more experienced in dealing with these kinds of situations. The couple tried again with a different PCA, but unfortunately the situation became even more unpleasant, as she “put on rubber gloves and reminded them both this wasn’t part of her job” (Tepper 2012). According to Tepper, the couple had engaged in mutually satisfying intimacy, but had been determined to have intercourse. Though the facilitated sex could have been successful with some adjustments, the attempts made both Gerrard and Laurie uncomfortable and were ultimately unsuccessful.

### **3.2.1a Considerations**

This case raises many relevant issues with respect to disability and facilitated sex with the assistance of a PCA. First, there are issues involving a third party who (i) may not wish to be involved, as was the case in the second attempt, (ii) may have no experience with this type of assistance, (iii) may be insensitive to the sexual interests of a disabled person. Secondly, Tepper notes that a request for this sort of assistance could be construed as sexual harassment on the part of the PCA. Moreover, simply asking a PCA to facilitate sexual activity may seem uncomfortable regardless of the answer: if the PCA refuses, the everyday working relationship between individual and care provider may feel awkward

and the patient is denied a sexual opportunity. However, if the PCA agrees, the individual may experience increased pressure or discomfort in their relationship with their partner (as illustrated in Gerrad and Laurie’s case—facilitated sex ultimately put a strain on their relationship), or the relationship with the PCA could be negatively affected (Tepper 2012).

Generally speaking, there is no formal education required to become a personal care assistant (beyond high school-level education), though educational requirements will vary depending on employer (Davila 2013). In Canada, there are a variety of training programs available, depending on the province. For example, Camosun College in Victoria, B.C. offers a Health Care Assistant training program, which includes courses on individual lifestyles and caregiving skills (Camosun College 2014). While there is currently no explicit mention of sexuality training or facilitated sex training, this could potentially be incorporated into the training program. Similarly, the Nursing program at the University of Victoria does not explicitly address patient sexuality, though related concepts are addressed.<sup>27</sup>

### **3.2.2 Nursing**

On the subject of nursing, Sarah Earle has discussed the potential involvement of nurses as playing a role in facilitating sex for disabled patients. She argues that the role of the nurse in a health care context is to offer holistic care, where a “holistic approach is underpinned by an ‘acceptance that health is determined and defined by interrelated social, psychological and biological factors’” (Earle 2001, 434). Some have noted that a holistic approach in nursing involves the understanding that “the whole is greater than

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<sup>27</sup> This information comes from correspondence with a professor in the Nursing department. (Email. Evers-Fahey, Karen. “Inquiry.” Email to Tracy de Boer. 9 September 2013.)

the sum of its parts'; this is known as whole-person holism" (434). Earle argues that, because sexuality is an important part of the whole person, this area of patient care deserves more attention than it typically receives. She acknowledges that, for various reasons (e.g., limited resources, the "messy and contingent" nature of nursing in reality), the holistic approach cannot always be fully realized. Moreover, "for the vast majority of nursing work," Earle writes, "it is the pathological and dysfunctional *body* that remains the primary focus of patient care despite a more holistic approach to nursing" (434).

Earle discusses the importance of sexuality in both an everyday context and the weight it may carry with respect to our individual identities. That said, Earle recognizes the lack of respect or acknowledgement disabled patients receive with regard to individual sexuality. With respect to the role of the nurse, Earle writes,

Nurses have the power to define others and to define others as asexual. In general terms, research suggests that nurses ignore patient sexuality and that this particularly affects the most vulnerable and powerless groups in society, in particular, disabled people and people in later life. (Earle 2001, 435)

Earle's main contention is that nurses should accept and acknowledge patient sexuality. Moreover, she provides a variety of suggestions of how this might be accomplished by establishing a "continuum of facilitated sex" that nurses could have some part in. This continuum is as follows:

- (i) Providing accessible information, advice and services
  - (ii) Fostering an environment which allows intimacy
  - (iii) Offering and observing need for privacy
  - (iv) Encouraging and enabling social interaction
  - (v) The procurement of sexual goods
  - (vi) Arranging paid-for sexual services
  - (vii) Facilitation of sexual intercourse with another party
  - (viii) Facilitation of masturbation
  - (ix) Sexual surrogacy
- (Earle 2001, 437)



Elsewhere, Earle writes that facilitated sex might require a nurse to “masturbate [a patient] when no other form of sexual relief is available” (437). Additionally Earle suggests that for many disabled people, “facilitated sex is qualitatively no different to other forms of assistance” (438), and thus nurses should resist making a distinction between washing, dressing, and sexual facilitation.

### **3.2.2a Considerations**

It is unclear whether Earle thinks there should be a specialized stream of nurses who learn facilitated sex practices or if all nurses should be required to do so (i.e., in this way a nurse would be required to masturbate a patient in the same way she would be required to place an IV line). I am wholly sympathetic to the idea that there needs to be greater awareness in the nursing community around issues of patient sexuality, particularly in the context of disability. However, it is unreasonable for the issue of access to be largely facilitated by the nursing profession and thus I believe some of Earle’s suggestions are unsuitable. Additionally, Earle assumes, at least to some degree, that disabled people may necessarily require nursing care, though this may only be true of some at certain times in life. The scenarios Earle imagines are somewhat unclear on this point (i.e., what kind of disabilities require additional nursing care over some others, or if some would be in long term care where nurses would be present, etc.).

With regard to the continuum she provides, nurses could certainly address some of these needs quite naturally, given their role. For example, fostering an environment that allows for intimacy, enabling social interaction or respecting patient privacy all seem to be reasonable requirements of nurses or others in the health care profession. However, I take some of the areas of her argument to be problematic. Firstly, there is a distinction

to be made in claiming that those in the nursing community should respect and acknowledge patient sexuality and the claim that an element of sex work should be incorporated into the nurse's role. There is a wide variety of ways that patient sexuality could be respected by health care professionals without the need for sexual contact. Despite Earle's account of the holistic approach, a nurse's role is primarily health-oriented (not to mention exhaustive).<sup>28</sup> Although sex can be related to one's health, to conflate the two entirely is concerning because sexuality and physical health are distinct.

Moreover, Earle's claim that many disabled people do not differentiate between facilitated sex and other forms of assistance seems false, given that much of the information I have gathered suggests otherwise (O'Brien 1990; Kroll and Klein 2001; Tepper 2012). To say that facilitating sex is quite different from bathing or dressing (both from the perspective of a caregiver and a disabled individual) is not to say that it is necessarily scandalous as opposed to mundane. Rather, it is important to note that if it is in fact qualitatively different, it will require a certain kind of sensitivity, experience and discretion.<sup>29</sup> For various reasons, a surrogate or sex worker could more suitably fill the kind of sexual facilitation role that Earle describes, and I discuss this in further detail. It is conceivable that there be a stream of nurses that could specialize in some sexual

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<sup>28</sup> Research indicates an extremely high turnover rate among nurses in hospitals, as many indicate being overworked and underpaid (Pellico, Brewer and Tassone Kovner 2009, 194).

<sup>29</sup> Earle does not specify what kind of facilitated sex she refers to when she claims that "facilitated sex is qualitatively no different to other forms of assistance" (Earle 2001, 438). Certainly it would depend on the degree of facilitation. Moreover, Earle seems to assume a hedonistic view of sex, where she imagines sex as physical pleasure or "relief" and lack of sex as physical discomfort, i.e., "needing to be relieved."

facilitation. However, it is over and above the duty of nurses in general that they be required to satisfy the sexual desires of their patients.<sup>30</sup>

### **3.2.3 Surrogate Partner Therapy (SPT)**

Surrogate Partner Therapy (SPT) arose from Masters and Johnson's work in the early 1970s and is currently described as a mix of sexual therapy, sexual education, and sex work (AASECT 2013, 2). Surrogacy work includes "a mix of education, exploration, and sexual play, but the balance between them shifts according to the client and his or her needs" (Cohen-Greene 2012, 104). Surrogate partners generally have two primary aims. The first is to model a healthy intimate relationship for clients, (hence the title *surrogate partner*). The second is to help clients resolve specific sexual issues, such as erectile dysfunction, premature ejaculation, anxiety around their sexuality, little or no sexual experience, difficulty communicating, poor body image, etc. (xiii). Additionally, the goal of a surrogate is to equip clients with the necessary skills (physical, emotional and social) to pursue their own intimate and sexual relationships. Linda Poelzl, a surrogate who has worked in the field since 1995, explains the environment that surrogate partners work to create:

It's a skill building environment for the client. We're working on relaxation, communication, and capacity to bring one's mind back to one's present experience. We are in the moment but we're also modeling attitudes toward sexuality and intimacy that many of these clients didn't get in their original family. (AASECT 2013, 3)

Clients are usually referred to a surrogate through a therapist, and sessions with a surrogate partner are generally limited from 6-10 meetings.<sup>31</sup>

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<sup>30</sup> There are additional issues with Earle's suggestion: sex acts performed by nurses may "medicalize" sexuality of patients and make aspects of patient sexuality seem clinical, which is realistically more damaging to patient sexuality as opposed to respectful.

One of the most well known cases of SPT is the subject of the 2012 film, *The Sessions*. The film tells the story of real-life Mark O'Brien, a writer who lived with polio, and the surrogate he saw, Cheryl Cohen-Greene. The account is also detailed in O'Brien's article in *The Sun Magazine* and in Cohen-Greene's memoir, *An Intimate Life*. In what follows, O'Brien describes his first meeting with Cohen-Greene and expresses some common sentiments regarding sexuality in the context of disability:

I began to tell her about my life, my family, my fear of sexuality. I could see that she was accepting me and treating me with respect. I liked her, so when she asked me if I would feel comfortable letting her undress me, I said, "Sure." I was bluffing, attempting to hide my fear.

My heart pounded — not with lust, but with pure terror — as she kneeled on the bed and started to unbutton my red shirt. She had trouble undressing me; I felt awkward and wondered if she would change her mind and leave once she saw me naked. She didn't. After she took my clothes off, she got out of bed and undressed quickly. [...]

Whenever I had been naked before — always in front of nurses, doctors, and attendants — I'd pretend I wasn't naked. Now that I was in bed with another naked person, I didn't need to pretend: I was undressed, she was undressed, and it seemed normal. How startling! (O'Brien 1990)

In their first session together, O'Brien and Cohen-Greene discuss O'Brien's personal history, and engage in some body awareness exercises, a usual practice that Cohen-Greene explains in her book.

Depending on a client's needs, sessions with a surrogate might progress to intercourse—as in Mark O'Brien's case. O'Brien notes the profoundness of being praised for his sexuality and the realization that "sex is a part of ordinary living, not an activity reserved for gods, goddesses, and rock stars" (O'Brien 1990). In the years following his

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<sup>31</sup> It should be noted that some surrogates do not engage in sexual intercourse with clients, but may instead engage in other intimate activity, such as cuddling, touching, undressing, etc. (Rousselle 2013). In other cases, heterosexual women will see female surrogates, simply to gain personal body awareness or confidence. In some of these cases, there is no sexual contact between client and surrogate (Cohen-Greene 2012). In this way, the role of the surrogate may differ quite dramatically.

sessions with Cohen-Greene, O'Brien met Susan Fernbach, who later became his wife. Arguably, this may have been partially attributed to the benefits of surrogacy, as Cohen-Greene states that her aim is to model a healthy intimate relationship so that clients are able to use this newfound knowledge and confidence to establish such relationships in the future.

### **3.2.3a Considerations**

Surrogate Partner Therapy is definitely a plausible option with respect to some of the issues around sexual exclusion. In particular, because the role of the surrogate is to equip individuals with the appropriate skills, knowledge, and confidence to pursue intimate relationships, this would be valuable to those who require this type of sexual assistance or empowerment. Additionally, surrogate partners could more suitably facilitate sex in certain health care contexts (or fulfill the role that Earle describes). Surrogates are more appropriately suited for sexual facilitation of a particular degree because sex and sexuality are their areas of expertise. In other words, unlike those in the nursing profession, they are specifically trained to facilitate fulfilling and healthy sex lives.

One thing to bear in mind with respect to surrogacy is that it is presently a relatively uncommon practice. At the height of its popularity in the 1970s, there were a few hundred surrogates practicing in the United States. Today the number is closer to a few dozen (AASECT 2013, 2). Additionally, the need for a client to be referred to a client through a therapist makes it so it they are not easily available (as a surrogate's involvement is at the discretion of the therapist and not the client). However, it is conceivable that the surrogate's role could be somehow modified so as to be referable

through any other health care professional (e.g., a doctor, nurse, or personal care assistant), or even contacted at an individual basis if necessary.

### **3.3 Commercial Sex<sup>32</sup>**

Enabling disabled people to see sex workers has been one of the most widely discussed strategies for mitigating the sexual exclusion of persons with disabilities.<sup>33</sup> In some countries, there are specific organizations that connect sex workers and disabled clients, such as Touching Base (Australia) and the TLC Trust (United Kingdom). These organizations generally provide some form of disability awareness training to their workers, which I discuss in further detail in following sections. Additionally, there may be the creation of disability-only brothels. (This was a suggestion proposed by Becky Adams, a former madam in the UK.) In this section I discuss commercial sex and disability in general terms, with more detailed discussion in the following subsections.<sup>34</sup>

The documentary film, *Scarlet Road*, explores some issues around commercial sex and disability. The film features Rachel Wotton, an Australian sex worker who works with Touching Base. She is passionate about the therapeutic benefits of sex as she claims, “I love that my job involves pleasure. [It’s about] making someone feel better about themselves” (Scott 2012). She also discusses the affinity she feels towards her clients (men with disabilities), as well as the privilege of providing joy to a vulnerable group.

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<sup>32</sup> It may be helpful to think about surrogacy and commercial sex as different forms of sex work. In this way, we may think about sex as a service that is provided by the worker for a client, instead of as a commodity that is obtained. “Sex work” is also a more suitable depiction on the flourishing view of sex, because it indicates the social and political nature of sex.

<sup>33</sup> This is most common in places where commercial sex is legalized (especially in some parts of Australia and the UK).

<sup>34</sup> Keep in mind that when we examine the sex industry as a way of fostering sexual inclusion, we are only looking at countries where commercial sex is legalized. Furthermore, we are only concerned with workers who can describe themselves as voluntarily involved in the sex trade.

The film also focuses on two of Wotton's clients. The first, John, is a man who has multiple sclerosis and is paralyzed from the neck down. Upon his visits with Wotton, he managed to regain some physical and sexual function that, due to his condition, he believed to be lost entirely. Another client, Mark, who has cerebral palsy, claims, "People do not understand the difference sex can make" (Scott 2012). As he frequently suffers from muscle spasms, he adds, "I need sex [...] to make my muscles relax. And I like sex" (Scott 2012). In addition to potential health benefits that disabled clients may receive, there are aspects of intimacy and sexuality that some clients have never experienced before—and have few other opportunities for such experiences (though it is not discussed explicitly in the film why this is the case). Lastly, a disabled woman in the film explains that her first sexual experience was with a sex worker. She notes that it was a far better experience than what it could have been; e.g., with a young man who didn't know what he was doing, and might have been insensitive to her impairment. These scenarios assume that sex with sex workers who are knowledgeable about certain physical impairments will have greater care, confidence and familiarity when it comes to sex with members of this particular group.

In a similar vein, Teela Sanders has conducted qualitative research on the subject of disability and commercial sex (with a specific focus on disabled men). She argues that the sex industry plays a crucial role in enhancing the quality of life for some disabled men by providing sexual opportunities for them. In one study, Sanders conducted interviews with female sex workers. She found that a collective narrative arose which indicated that the workers maintained that prostitution held a diverse and useful purpose in society. In particular, some women "saw [the work] as an important service for men

who are unable to satisfy themselves sexually, or unable to form relationships that can provide sexual fulfillment” (Sanders 2005, 2437). Additional studies have found that some sex workers are in fact “proud to be able to offer sexual services to a disadvantaged group” (2437). As one sex worker explains, “We are not here for able bodied people. Disabled people—they still need to be relieved. [...] It is because of them that I think it has to be legalized” (2437).

### **3.3.1 Brothels and Other Sexual Services**

In 2013, Becky Adams, a brothel-owner and self-proclaimed “poster girl for the British sex industry” (Jones 2012) stated that she had plans to open a brothel specifically designed for disabled clients. This brothel would be wheelchair accessible and rooms would be outfitted with hoists and other equipment to assist disabled clients. Presumably, the sex workers would also have special training or knowledge of various impairments as well. Adams eventually modified her plans and created Para-Doxies, a “sexual enabling service for men and women with a permanent injury, a disability or terminal illness in the UK” (aid4disabled 2014).

Para-Doxies is similar to other organizations like Touching Base (Australia) and TLC Trust (United Kingdom), which connect disabled people with sex workers, as well as provide other services. In particular, Touching Base’s website states:

People with a disability have an intrinsic right to sexual expression. This right enables people to develop relationships, have sex, explore and express their sexuality and achieve intimacy without personal or systemic barriers. Furthermore, necessary personal and systemic supports must be provided for the expression of this right. (Touching Base, n.d.)

In order to provide a higher quality of service, Touching Base offers relevant training for its workers, such as SPAT: Service Provider Awareness Training, and PDAT:



Professional Disability Awareness Training. These training programs enable sex workers to have a foundation of information and skills when working with disabled clients.

Additionally, the PDAT training covers diverse subjects from definitions and models of disability (e.g., medical vs. social model of disability) to medical aspects (e.g., familiarity with catheters and other medical devices) to legal issues (e.g., consent, duty of care, etc.).

Similarly, the TLC Trust “provides opportunities, advice and support to disabled men and women so they can find appropriate sexual and therapeutic services” (TLC Trust, 2008).

It does so by connecting those in the sex trade (sex workers, striptease artists, massage therapists and tantric teachers) and disabled people, as well as providing information and advice (including legal advice) to disabled people and/or their parents, PCA’s, and other health professionals, etc.

It is noteworthy the extent to which these organizations recognize, respect and promote the sexual interests of disabled people. Evidently, they do so to a much higher degree than both the health care community and mainstream community. In various ways these organizations act as advocates for disabled individuals and their sexual interests. As I mentioned earlier, and will expand on, some form of public advocacy would be integral to the promotion of sexual justice for persons with disabilities.

### **3.4 Objections to Commercial Sex**

In the following section, I outline two major objections to facilitated sex and commercial sex as a means of providing sexual access for members of the disability community.

### 3.4.1 The Male Sex Right

In her article, “Disability and the Male Sex Right,” Sheila Jeffreys argues that discourse around sexual rights for disabled people is a veiled way of promoting a conception of male sexuality that perpetuates male dominance over women. She argues that often “sexual rights” are discussed in a gender neutral way, which she deems problematic because “under male dominance, male and female sexuality are constructed in such different ways” (Jeffreys 2006, 332).

She begins her discussion with the claim that one of the most pervasive representations of sexuality is a hyper-masculine one, which eroticizes gender hierarchy (e.g., dominance and submission). Jeffreys references Carole Pateman’s (1988) concept of “the male sex right” and explains that this is “the privileged expectation in male dominant societies that men should have sexual access to the bodies of women as a right” (328). Under this view, one of the primary ways men maintain their dominance is through (heterosexual) sex. Jeffreys sees this as so pervasive, that even if there are some men who are unable to find sexual partners through “normal” means, concessions will be made to ensure that practices like prostitution are made available. In this way, the male sex right enables disabled men to pursue sex with prostitutes, which she deems to be an inherently abusive and exploitative practice. Furthermore, Jeffreys explains that prostitution teaches a “depersonalized, objectifying form of sexuality to men with disabilities which requires that a woman suffers emotional and/or physical abuse” (334). Instead of teaching disabled men and boys about “mutual sex, respect for the personhood of women, relationships and intimacy, prostitution teaches the exact opposite” (333).

Jeffreys’ argument pertains not only to sex workers/prostitutes, but other facilitated sex practices as well, including surrogacy and facilitated sex with the

assistance of a nurse or caregiver. Of the former, she equates surrogacy to prostitution and denies the therapeutic goods that surrogacy aims to promote. Of the latter, she is primarily responding to Sarah Earle (whose view I discussed in the foregoing). Jeffrey's comments that Earle does not discuss some important variables regarding nursing and facilitated sex. For example, Earle does not distinguish whether male nurses would masturbate male patients, or female nurses would masturbate female patients, or whether male nurses would do this, or if female patients would want this. Moreover, Jeffrey's worries that male caregivers might be able to use the justification of facilitated sex as a cover for sexually abusing disabled women in their care. Jeffrey's objections pertain largely to a certain model of sexuality under patriarchy—one that emphasizes male dominance and female submission.

#### **3.4.2 Against “Special Needs Brothels”**

Mik Scarlet, a journalist and sex/disability advocate, objects to disabled-only brothels.

For the sake of argument, let's assume that Scarlet would also object to organizations that connect sex workers with disabled men and women. (It's not a stretch of the imagination to assume that Scarlet would be against this type of service, as his reasons apply in both cases.)

Scarlet's desire is a world where disabled people are regarded as legitimate sexual partners—not one where it is simply easier for disabled people to see sex workers. He argues that brothels for disabled people (and presumably organizations that connect sex workers and disabled people) are damaging not only to disabled individuals, but to society as a whole. He states that “disabled people [should be] treated just like the rest of society[,] so I am dead against this current push to create special cripp friendly brothels

and for disabled people to get free visits to sex workers on the state” (Scarlet 2013).

Scarlet outlines two main reasons he opposes disability-only brothels or similar services.

First, he believes it is damaging to the disability community. Scarlet claims that the idea that disabled people have a greater need for commercial sex is a prevalent social sentiment that lacks hard evidence (Scarlet 2013). He maintains that many disabled people do in fact form sexual relationships in the “normal” way. However, Scarlet argues, the media often focuses on the subject of sex and disability in the context of commercial sex. This ultimately has a negative effect on the social image of the disability community, perpetuating a stereotype that they are needy or unable to have sex by other means.

Second, Scarlet believes these services are damaging to society as a whole. He maintains that linking commercial sex and disability in this way encourages the non-disabled community to hold negative beliefs of disabled people (such as disabled people aren’t sexy, or are not legitimate partners, etc.). Furthermore, Scarlet worries that if someone were to acquire a disability, “part of the grieving process they [would] have to go through revolves around the loss of their sexual confidence” (Scarlet 2013). This person might believe that the only way for them to experience sex again would be by paying for it—which, according to Scarlet, most people really don’t want to do (Scarlet 2013). Moreover, there is an issue of a self-fulfilling prophecy here: if one grows up or acquires a disability and is so assured that the only way to experience sex is to pay for it, then this is what one will do (Scarlet 2013).

In addition to his objections to disabled-only brothels,<sup>35</sup> Scarlet expresses some of his personal experiences as a disabled man. He explains that, while his disability has

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<sup>35</sup> Moreover, Scarlet notes that businesses should ensure that their premises are accessible to disabled people, “so any brothel that opens should be open to disabled people. Not just one specializing in cripple

undoubtedly affected the way he feels about his sexuality and level of attractiveness, he insists that this is an issue faced by everyone—not only disabled people. Scarlet details his personal journey and explains that, while it has been challenging at times, he has also had a deeply fulfilling sex life and is currently happily married. Though he does not say so explicitly, Scarlet implies that if he is capable of overcoming obstacles to sexual fulfillment and having a variety of sexual experiences without paying for them, so too are other members of the disability community.

### **3.5 Responding to Objections**

Both Jeffreys and Scarlet raise some valid concerns regarding commercial sex and the disabled community. In the following section, I will respond to their objections and offer what I deem to be a better way of evaluating these issues.

Both Jeffreys and Scarlet segregate commercial sex from non-commercial and argue, to some degree, that this is the relevant distinction to make. Instead of evaluating commercial sexual exchanges as inherently inferior to non-commercial exchanges, I maintain that we should evaluate these issues with the flourishing view of sex in mind. Certainly, some commercial sexual exchanges will not be as delightful as some non-commercial exchanges. But the reverse is also true: some non-commercial sexual exchanges may be truly awful (or maybe just plain dull) compared to some commercial exchanges that may be highly fulfilling.

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sex” (Scarlet 2013). In other words, a disabled person should not have to seek out a paid-sex experience from wherever the disability-only brothel is, but “should be able to pop down to your local knocking shop” as all brothels should be made fully accessible (Scarlet 2013). This point seems to be somewhat at odds with his prior arguments, but in any case, this is something I agree with. Public space should be made accessible to people of a variety of physical abilities and currently this is the law in many places.

### 3.5.1 Response to Jeffreys

Jeffreys' objections do not only pertain to commercial sex, but to the patriarchal undertones that are involved in some of the proposed solutions regarding facilitated sex and disability. I will admit that I have shared some of these concerns at one time or another. For example, the fact that disabled men are more likely to seek commercial sex than disabled women may imply a relevant difference about male and female sexuality (whether this is social or biological is up for debate). However, I do not think it is accurate to characterize *all* exchanges between client and worker as one of dominance and submission, especially when we consider the broader context.

Jeffreys argues that the context in which disabled men purchase sex is such that domination is a part of what is being paid for in commercial sex. This characterization depends on the background social conditions as having a distinct gender hierarchy. Certainly, very real gender inequalities exist—but so do social inequalities around disability, which Jeffreys does not acknowledge. With masculinity and disability in mind, one study on the subject indicated three dominant strategies employed by disabled men to address their marginalization as sexual beings:

Reformulation, which entailed men redefining masculinity according to their own terms; reliance, which entailed men internalizing traditional meanings of masculinity and attempting to continue to meet these expectations; and rejection, which was about creating alternative masculine identities and subcultures. (Shakespeare 1999, 59)

Not surprisingly, the second strategy caused the most problems for respondents, due to their inability to meet social standards of masculinity. Jeffreys suggests that disabled men seek sex with prostitutes for the same reasons as able-bodied men. However, this may not be the case at all, especially if one's masculinity is construed differently because of one's disability. Moreover, "masculinity and disability are in conflict with each other because

disability is associated with being dependent and helpless whereas masculinity is associated with being powerful and autonomous” (Shuttleworth 2012, 174). In this way “disabled men do not automatically enjoy the power and privileges of non-disabled men” (Shakespeare 1999, 61), for they may not even be perceived as adult males in the “normal” sense. Moreover, “in some ways, disabled men are never ‘real men’: they do not have access to physical strength or social status in the conventional way” (60). In other words, in so far as “real men” are defined in a way that depends on physical strength, independence and assertiveness (among other similar qualities), disabled men are not “real men.” (The apparent conflict between masculinity and disability is arguably resolvable and would likely involve a broader social definition of what masculinity or a “real man” is, but this is beyond the scope of this project.)

It is important to consider other relevant social factors (such as socio-economic status, race, class, age, disability, etc.) when addressing commercial sex, and to recognize that, as a practice, it has a high degree of internal variability. Debra Satz has argued, “While outsiders tend to stigmatize all prostitutes, prostitution itself has an internal hierarchy based on class, race, and gender” (Satz 2010, 137). She proceeds by offering an illustration of some very different cases. First we are to imagine a fourteen-year-old girl who prostitutes herself to support her boyfriend’s drug habit. She later forms her own drug habit and thus continues to work the streets. Satz explains that this girl is uneducated and often subjected to violence by her clients. She has no control over whether or not she has sex with a man—this is at the discretion of her pimp (137). This case seems to very straightforwardly involve domination in the sense Jeffrey describes. In another example, Satz describes a Park Avenue call girl or highly paid escort. She writes, “These women

have control over the entire amount they earn as well as an unusual degree of independence [...] They can also decide whom they wish to have sex with and when they wish to do so” (137). Evidently, there is little resemblance between the two cases, yet both are within the realm of commercial sex. If we imagine in the second case, for example, that the sex worker works with clients with disabilities and finds this important and rewarding work, the domination story seems to shift. The sex worker may have greater physical strength, more sexual experience and overall control of the situation than her male clients, and this creates a role-reversal in terms of the power dynamic (if we were to subscribe to Jeffreys’ framework, which ultimately I don’t think we should).

If we recognize the realities of sexual exclusion, cases where men with disabilities seek commercial sex can be understood in terms other than domination/submission. We can see that clients are seeking the goods of sex, such as pleasure, intimacy and sexual connection. For persons with disabilities in particular, sex may be said to “heal a sense of emotional isolation so many of us feel even though we are socially integrated” (Tepper 2000, 288). Moreover, this pleasure is “the authentic, abiding satisfaction that makes us feel like complete human beings” (288). As opposed to the perpetuation of male domination, I maintain that a disabled man who seeks sex with a sex worker is seeking *sexual inclusion*. At a fairly simple level, sexual inclusion involves both the recognition of an individual as a sexual being, and their physical inclusion in sexual practice(s). In a more complex sense, sexual inclusion depends upon individuals feeling a fuller sense of *social* inclusion, or an elevated social status that is achieved via being and being seen as a sexual agent.



### 3.5.2 Response to Scarlet

I am sympathetic to some of Scarlet's objections, as I have similar concerns that enabling disabled people to see sex workers on a larger scale does not address the root of the issue. Additionally, Scarlet is concerned that if disabled people are encouraged to see sex workers as a primary means of sexual fulfillment, this will only perpetuate negative ideas about sex and the disabled community. I have shared these concerns at one time or another, but I believe that these issues can be addressed with the transformation of social attitudes. Furthermore, I believe these attitudes are also perpetuated because of stigma around the sex industry and this should also be addressed.

Scarlet worries that disabled-only brothels or similar organizations perpetuate negative attitudes around disabled sexuality (e.g., the idea that disabled people are not viable sexual partners). However, these organizations did not *create* the social misconception that disabled people are unsexy. In fact, they exist *because* of these negative social attitudes and are, in a way, trying to actively work against these myths. (For example, Touching Base raises public awareness around issues of sex and disability and one of the aims of the TLC Trust is to work as advocates, trainers and mediators with parents of disabled individuals, PCA's and health care professionals. In other words, these organizations seem acutely aware of the difficulties faced by members of the disabled community, more so than mainstream society.) This facet of Scarlet's argument could devolve into a chicken-or-egg scenario: Is it the case that commercial sex catering to disabled clients create/perpetuate negative ideas about disabled sexuality, or is it the case that there exists negative ideas about disabled sexuality and so the commercial sex sub-industry arose? I believe that the latter option is more likely the case. It is plausible that these types of commercial sex organizations perpetuate negative attitudes to *some*

degree, but this is not an intrinsic feature of the sex trade. Rather, this perpetuation is for reasons associated with the stigmatization of commercial sex more generally. To illustrate:

- (i) Stigma/negative attitudes around commercial sex exist<sup>36</sup>
- (ii) Negative attitudes and misconceptions around disabled people and sexuality exist
- (iii) Because of (ii), some disabled people pursue commercial sex as a means of sexual inclusion and sexual opportunities
- (iv) There is criticism of (iii) and claims that this is “inferior sex”—in part because of (i)
- (v) This idea of inferior sex perpetuates negative social perceptions around the disabled community and may affect those within the disabled community

If commercial sex were normalized, then there would be very little reason for these negative attitudes to exist. If we address the stigma around commercial sex and begin framing the issue in a different way (i.e., in terms of respectful and abusive sexual exchanges, as opposed to commercial and non-commercial), then we may begin to see a reform in social attitudes around both commercial sex and disabled sexuality.<sup>37</sup>

Moreover, Scarlet’s implication that other disabled people should be able to have the same kind of fulfilling sex life as himself is an oversimplification of the whole community, and of the variety of impairments that can affect one’s functioning from

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<sup>36</sup> The question then becomes whether or not the stigma around commercial sex is justified. This is ultimately beyond the scope of this project. Though I have given some thoughts that the commercial/non-commercial distinction is likely not the proper one to make.

<sup>37</sup> Moreover, the concept of sexuality under patriarchy (i.e., dominance/submission) needs to be addressed. This is an abusive and violent image of sex, when in reality, sex is a part of human flourishing. In other words, we need to establish a new norm when it comes to thinking about and talking about sex.

moderately to severely. If we recall the capability approach here: Scarlet assumes that with the means of confidence and openness, any disabled person would be able to convert these into the valuable ends of satisfying sexual experiences. He assumes equal conversion capabilities on behalf of the entire disability community. This is problematic because we know that this is not an accurate way to assess individuals' real opportunities. Moreover, there are many other factors at play in these situations that Scarlet may not be accounting for. With regard to his sexual experiences, undoubtedly he has faced challenges but has also been successful and this is something worth noting, but it is problematic to apply his experiences to an entire diverse community.

While Scarlet makes some relevant points regarding social attitudes around sex and the disabled community, he makes some problematic assumptions that could be more fully developed. As I've mentioned, social attitudes around these issues require attention, and I will discuss this in further detail in the following sections.

### **3.6 Sexual Justice**

Sexual justice requires social rethinking and reformulation of discourses around sex. It requires not only the sexual recognition and inclusion of marginalized groups, like the disability community, but a way of recognizing sex as part of the human good. Some of the ways this can be achieved is by addressing negative social attitudes, while at the same time promoting the truth about sex and disability.

#### **3.6.1 Addressing Stigma and Marginalization**

We should acknowledge that the commercial sex trade is a part of our social landscape, and moreover, it can (and does) contribute positively to the lives of many people.

Furthermore, we should not criminalize commercial sex in a destructive fashion that harms those working in the sex trade.

Unlike Jeffreys, I maintain that much of the wrongness of the sex trade is in the associated harms that exist in some forms of commercial sex.<sup>38</sup> It is important to bear in mind, however, that these harms are not exclusive to the sex trade, but exist in non-commercial sexual exchanges as well. We ought to concentrate on eradicating these associated harms, as well as the perpetuation of sexuality based on dominance and submission (i.e., abusive/violent sexualities).<sup>39</sup>

Furthermore, it should go without saying that anyone who is in the sex trade against their will, either through coercion or a lack of more desirable options, should not be considered as involved in commercial sex voluntarily. It is important to draw a distinction between sex work, sex trafficking and sexual exploitation. As Satz has argued, “No woman should be forced, either by law or by private persons, to have sex against her will” (Satz 2010, 152). Indeed *no one* should be forced to have sex against their will. This is of paramount importance with respect to not only commercial sex, but sexual justice. The laws around sex work ought to promote a worker’s agency, and ensure that they have adequate information, protection and support, among other things (152).

### **3.6.2 Public Advocacy and Social Reform**

What I mean by public advocacy is a group or organization that is explicitly focused on issues of sexuality and disability, or on the sexual interests of persons with disabilities.

This group could involve a variety of people, either disabled, non-disabled, or of a

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<sup>38</sup> It is important to note that commercial sex is highly diverse, with an internal hierarchy based on class, race, and gender (Satz 2010, 137).

<sup>39</sup> On a slightly different note, by pairing sex workers and disabled people together in this way, the dominant social paradigm remains relatively unchanged. In other words, the non-disabled majority does not have to reevaluate views on sex, sexiness, and who is a potential sexual partner.

relevant occupation (such as sex work, surrogacy, health care, nursing, personal care assistant).

Some form of public advocacy group(s) would be necessary to promoting sexual justice for the disabled community, as it could engage with both the public and policy makers on these issues. Currently, there are various disability resource organizations that are concerned with issues such as independent living, transportation, access to employment opportunities, etc. (VDRC 2013). However, these organizations often do not explicitly deal with issues of sexuality or the sexual interests of disabled persons. Interestingly, as I mentioned in the foregoing, some sex work organizations *do* act as public advocates for the sexual interests of disabled persons (where disability resource groups do not). This kind of sex/disability advocacy could be expanded to exist in relevant communities and institutions, such as the nursing community or elsewhere in healthcare, as well as care facilities.

The ideal solution with respect to the issues of sex and disability is the transformation of social attitudes, and the full recognition of persons with disabilities as full persons—which includes the recognition of and respect for individual sexuality. As is unfortunately the case, this kind of social reform does not happen instantaneously. This is where public advocacy would be necessary for raising social awareness of the relevant issues, through education, media, policy, and other relevant outlets. Additionally, I do not think it necessary for public advocacy groups to all share similar ideas of the “best” methods for achieving sexual justice for persons with disabilities. For instance, some may wish to promote surrogacy while others do not. Instead, the importance is mainly in the underlying facts that sex is good and being systematically excluded from sex is bad. Just

as sex/sexuality and disabilities are diverse, there is no reason that one method of advocacy would work for all.

Before I conclude, we should also take note of the UN Convention on the Rights of Persons with Disabilities. In particular, Article 3 highlights the necessity for respect, non-discrimination, equality of opportunity, and the full and effective participation and inclusion in society of persons with disabilities. Furthermore, Article 8 indicates the importance of awareness raising: the need to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, as well as promoting awareness of the capabilities of persons with disabilities. With respect to sexual matters, the Convention also gives mention of disability and sexual health: “States Parties shall: Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health...” (United Nations 2006).

Public recognition of the UN Convention could certainly play some role in facilitating the social changes necessary for fostering sexual inclusion. More specifically, if we acknowledge the multifaceted nature of sex and its importance in our social lives, we can see how sexual inclusion can relate to the full and effective participation and inclusion of persons with disabilities in society, as referenced in the Convention.

In the foregoing, I evaluate many of the ways in which sexual opportunities might be fostered for members of the disability community. There is a sense of shared responsibility here, not just on behalf of those in the disabled community to be honest

about their sexual interests, but on behalf of those in health care or caregiving roles, those in the sex trade, and those in mainstream society.

## **Final Remarks**

I have made my case for sexual justice for persons with disabilities. The main aim of this project has been to raise informed awareness of these issues, and to encourage you to do the same. In doing so, we resist the social misconceptions that negatively affect the way we think about sex, disability, and justice. Moreover, this awareness has the ability to create a ripple effect that transforms not only our attitudes, but also public spaces and policies, which is necessary for sexual justice.



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