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Equal Opportunity to Meaningful Competitions: Disability Rights and Justice in Sports

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Abstract

This paper explores the questions of equality and social justice for people with disabilities in sports and, by extension, other civil societal practices that involve the pursuit of excellence. I argue that such practices come within the purview of justice depending on the interplay between political activism, institutionalized anti-discrimination statutes such as the ADA, and the internal norms of a practice. There are many ways to interpret the ADA, and a successful argument for a right to a pursuit of excellence requires that the ADA be understood as an *anticaste* principle. That interpretation allows me to show how even voluntary, ostensibly apolitical social practices can stigmatize groups of people — people with disabilities, for example — and how such practices can be refigured to bring about social justice.

Keywords: disability sport, Paralympics, ADA, equal opportunity

I. Introduction

In summer 1999, nine wheelchair users filed a lawsuit against the organizers of the New York City Marathon (NYCM), alleging

discrimination that violated the Americans with Disabilities Act (ADA). Wheelchair athletes had been allowed to participate in the NYCM, one of the world's largest marathon races, for 20 years, but not on the same terms with able-bodied runners. The plaintiffs alleged in their complaint that they were routinely but randomly stopped by the police so that elite runners could pass, sometimes for up to 40 minutes; they did not have a competitive wheelchair division; and that there were no prizes, award ceremonies or media exposure for them (Litsky, 1999). The general theme of these practices was that people with disabilities didn't really count as *athletes.* For example, that they could be stopped implied that *improving* the times in which they finished the 26.2-mile race wasn't significant, even though it was a goal even the most recreational, 5-hour, able-bodied marathoner could have. Their not having a *competitive* wheelchair division implied the same, since it lumped together hand-pushed racing wheelchairs and chairs using bicycle gears. The implications were made explicit by the absence of prizes or even finishers' medals for these athletes.

This particular dispute has been settled, more or less happily, and given recent progress in disability sport, might seem like only an ugly reminder of a bygone era. After all, there is evidence to suggest that disability sport has been significantly "mainstreamed" and people with disabilities are recognized as athletes: Since 1988 the Paralympic Games have been held in the same venues as the Olympic Games, and there has been increasing cooperation between the International Paralympic Committee and the International Olympic Committee (see, e.g., International Paralympic Committee, 2005b; DePauw & Gavron, 1995). Golfer Casey Martin's victory in the U.S. Supreme Court in 2001 to use a cart on the PGA Tour also was seen as a major victory for disability sport (Greenhouse, 2001; Abbott, 2001). And, in running, the NYCM had been a bit of an outlier, anyway: most other major marathons in the world had had competitive wheelchair divisions at least since the 1980s.

Things aren't quite so simple. How mainstream disability sport has become remains an open question (Darcy, 2003), and the political and legal victories haven't been forgone conclusions; tenacious opposition persists (see, e.g., the disability-related commentary on

overlawyered.com). In general, the NYCM case points to still tricky questions about the participation of people with disabilities in sports and similar social practices. On what terms may people with disabilities participate in competitive sports? *What* particular sports can they participate in, and why? How can we tell who should be allowed to participate? Ultimately, these issues raise questions about social justice: Are voluntary pursuits of excellence — where distinguishing between better and worse is the whole point — within the scope of social justice? If they are, how do we determine when justice has been done and when an injustice of some kind exists?

The easy — but mistaken — answer is that questions of justice don't even arise in cases like the NYCM challenge. That is because, on such a view, social justice is about the equal distribution of what Alasdair Macintyre (1984) calls *external* goods, and not about goods *internal* to a practice: a liberal-democratic state ensures you have a *right to pursue* a job (external good), but no *entitlement to one* (internal good); a right to education (external), but not to becoming the valedictorian at your school (internal). Similarly, the view goes, the ADA and other such institutionalized rights at most ensure a person with a disability the right to participate in a pursuit of excellence, but no entitlement to anything that would count as excellence.

The easy answer is mistaken because it confuses participation with *meaningful* participation. A person's mere presence at a pursuit does not mean she actually participates in it; it depends on what terms she does it. But this does not obviate the bigger questions, just refocuses them: Can there be a right to a meaningful participation in a pursuit of excellence, and on what terms?

The answer is that it depends on the interplay between three factors: the politicization of a practice (someone needs to make a demand), institutionalized principles of justice (e.g., the ADA), and sometimes inchoate, often controversial ideas of what the practices in question are all about. In what follows, I explore the relationship between the factors, focusing on the latter two. First, there are many ways to interpret the spirit of the ADA, and a successful argument for a right to a pursuit of excellence requires that the ADA be understood as an *anticaste* principle. That interpretation allows me

to show how even voluntary, ostensibly apolitical social practices can stigmatize groups of people — people with disabilities, for example — and how such practices can be refigured to bring about social justice.

II. The ADA as an Anticaste Principle

In her 1984 book *The Disabled State*, Deborah Stone argued that the key to understanding disability *politically* was to think of the state as attempting to maintain the uneasy boundary between two distributive systems, work and need. At least in the west, the historical thread in disability policies had been to make sure that those "genuinely" unable to work got whatever help they deserved without those able to work receiving perverse incentives not to do so. If we accept Stone's analysis, then the ADA looks truly groundbreaking: Congress explicitly framed the law as a corrective to unjust *discrimination* against people with disabilities. There is much to be said for reading the ADA as a good-faith piece of civil rights legislation, the kind of legislation that shows the state's commitment, however grudging at times, to the fact that distributive justice isn't only about the just distribution of material goods: it can be about the just distribution of rights, opportunities, capabilities, even recognition and respect. The ADA is premised on the idea that disability policy shouldn't only involve taking care of needs while discouraging shirking; it tries to correct the world so that someone's having a disability does not mean she is entitled to fewer opportunities and respect than non-disabled persons. The ADA enshrines that social value into law and says that the value is important enough for the state to use its coercive apparatus to enforce it.

What that social value is is open to some interpretation. Samuel Bagenstos (2000) has compellingly argued that the injustice in the case of disability is the creation of *stigma* (Goffman, 1963; Karst, 1989) and that the best interpretation of the ADA is to read it as an institutionalized piece of what Cass Sunstein (1994) calls the "anticaste principle" (See also Francis & Silvers, 2000; Koppelman, 1996). On that view, the state wants to ensure that people with disabilities do not become group who are seen as less worthy than

people without disabilities. Insofar as people with disabilities *have* been treated as less worthy than others, the state must try to eradicate such practices.

To see the implications of this interpretation of the ADA in one set of cases, I turn to sports.

III. Sports, Civil Society, and Justice

Why the focus on sports? In a general way, they reflect society's broader ideas about merit and excellence, fairness and norms. They are profoundly conventional, which is to say, cultural, creations of human agency. A. Bartlett Giamatti (1989) suggests sports — like arts — reflect two of humankind's highest aspirations: self-knowledge of one's freedom, on the one hand, in a community shared by mutual agreement, on the other. We needn't agree with Giamatti's formulation to think sports are indeed an important cultural site in which at least our modern society tries to sort out many of its broader value commitments.

Let us specify these dimensions. First, sport is a social practice in which the idea of achieving something others value as praiseworthy is the whole point. Second, in sports, this praiseworthiness depends on *competition*: to the extent people do something better than others, they are ranked as more praiseworthy than those others, and whoever is better than everybody merits most praise. This competitive dimension is a *constitutive* norm; that is, it makes the practice what it is. There are many other social practices which are about the pursuit of excellence, but where competition is not constitutive: arts, for example. Further, in sports the standards of excellence are supposed to be as clear as they come. This isn't quite true: Sure, there are objective measures, but their application depends on what categories are salient, as we will see later.

Finally, sports are a feature of civil society — the constellation of associations and institutions distinct both from the state and from the domestic sphere — and as such almost entirely voluntary. Citizens can choose between different kinds of engagement in sports or simply choose *not* to engage in them at all.

That practices in civil society are voluntary does not mean that they cannot be within the purview of justice. Civil rights struggles over the last century have convincingly established that questions of justice arise in the civil society. That is, for example, what the ADA's public accommodations clause addresses. But what remains open is the way and extent to which *specific* practices are to be open to all comers — or what "all comers" actually means. The *legitimately* discriminatory nature of sports — discriminating between better and worse by internal standards — makes them a particularly good case to puzzle through the relationship between legitimate and illegitimate discrimination. It makes them political and politically interesting.

Modern sports have been an important site for many kinds of politics, but I focus here only on the question of whether sports themselves can become instances of justice and injustice to people with disabilities. In effect, I am asking whether Harlan Hahn's observation on disability and work (1985, 312) can be more than a metaphor. Hahn wrote: "The right of disabled citizens to have an equal chance to compete with the nondisabled in a race rigged against them by factors unrelated to their individual talents may be incompatible with the standards of a democratic society."

So the question is: In an *actual* race — tournament, game, match — are the standards of success "unrelated to the individual talents" of people with disabilities? The intuitive answer of people sympathetic to disability rights is likely yes, as is my final answer in the paper: "Disability" in one dimension does not preclude talent and excellence in others. But, intuitions notwithstanding, the answer isn't obvious. First, people disagree: commenting on the Achilles Track Club lawsuit against the NYCM, a participant in an online runners' forum wrote in 1999: "I sympathize with the handicapped [sic], but racing isn't something they should try to do." To be sure, the view reflects the very attitudes that help generate the stigma the ADA tries to correct against. But it also, accurately, reflects the view that sports are a pursuit in which difference makes a difference, and in that way, reflects a more general position specifically critical of disability rights: "Even if one concedes a role for government in eliminating private discrimination, one must also acknowledge that discrimination against disabled individuals is different in kind from discrimination by

reason of race, national origin, religion, or sex" (O'Quinn, 1991). The theoretical and political challenge for those who think that Hahn's point does apply in sports is to show why and how the difference of a disability isn't the same as *comparatively less valuable* talent.

To anticipate my conclusion: We can meet the challenge by rethinking about the meaning of excellence in sport. This will show us that the meaning indeed admits different kinds of talents without requiring any fundamental change in the meaning of the excellence. My argument, in other words, isn't about "dumbing down" excellence in sport — a familiar conservative lament about claims of equality since at least the 18th century (See, e.g., Epstein, 1966; Herzog, 1998) — but simply about showing that disability is perfectly compatible with that excellence.

I bring up the conservative worry about general equality deliberately: The next step of the argument requires we turn to questions of the equality of opportunity.

IV. Equal Opportunity to What?

Let's return to the New York City Marathon and the lawsuit brought by the nine members of the Achilles Track Club, an international organization for wheelchair athletes.

In their defense, the New York Road Runners Club (NYRRC), which conducts the marathon, cited concern for wheelchair users' safety as one of the reasons their progress was often delayed and why they weren't always allowed to start at the official starting line (Litsky, 1999; McKinley, 1999). The plaintiffs considered these arguments both patronizing and disingenuous, and soon enough the NYRRC did begin to make real concessions, which led to a general out-of-court settlement. For the November 1999 marathon, they promised wheelchairs would not be delayed on the course and promised to introduce a special wheelchair division for the year 2000 race and prize money by 2001. (In the non-disabled divisions, the prize money runs in tens of thousands of dollars.)

So although the problem has gone away and although the NYCM was, as I said earlier, a political laggard in the world of distance running, it is useful for our exploration to begin with the philosopher's usual move and call into question something no longer in dispute. Why should wheelchair athletes participate in a *footrace* in the first place? Wheelchairs have wheels, footraces are events where people run or walk. First, why should wheelchair users get to participate at all and, second, why should they participate in footraces? Let's begin with the second, more specific question: Why footraces? The answer is a pragmatic one, although no less robust for that: Although a wheelchair user can, on the average, move faster than a person on foot (which is why wheelchair athletes usually begin their race a few minutes before runners), the speed is closest to a person on foot. Notably, push-rim wheelchairs are significantly slower than racing bicycles, the other possible reference group. Furthermore, a wheelchair is the most quotidian mode of movement for a person with a mobility disability, just like feet are for able-bodied persons. Part of the appeal of organized running and walking for people who enjoy it is that it is so easy to do; one can, in theory, jump into a footrace just as one is. The more general idea is that disability is not the same as *inability*. As DePauw and Gavron observe, the recent tendency in disability sport classification has been to focus on functional *abilities*, not on disability (1995, 11, 120–127; see also Sherrill, 1998, 33–35; International Paralympic Committee, 2005a).

This gets us to the question of why athletes with disabilities should get to participate in an able-bodied persons' race in the first place. Here is a rough first cut for an answer: Wheelchair athletes should get to participate (1) because some wheelchair users *can* engage in a competition which is in most essentials the same as the competition by people not in wheelchairs, (2) because some of them also *want* to engage in such competitions, and (3) because our intuitions about the norms of a liberal society say that if someone wants to do something she can do without burdening others, she should get to. That was the logic on which people with disabilities argued for their admittance into footraces in the late 1970s. Things weren't simple then because in the absence of the ADA, there was a gap between the political intuitions and a *specific* institutionalized principle that would apply. To some extent, the Civil Rights Act of

1964 as well as later disability-specific statutes such as the Architectural Barriers Act or the Rehabilitation Act enacted to help people with disabilities in other contexts afforded enough legal and political analogies for a legitimate case by analogy (see Sunstein, 1993).

In the case of the New York City Marathon, again a visible landmark in these matters, much turned on how (1), the wheelchair users' ability to participate, was interpreted and on whether the ideals of equal opportunity applied in the case. Interest in participation — (2) above — wasn't the issue; that was the very reason the demand was made in the first place. The organizers of the race did not deny that people with disabilities can participate in *some* athletic activities, but they argued that they could not participate in a footrace aimed primarily at able-bodied runners without seriously endangering everybody. Fred Lebow and James Fixx, the race directors, argued in a hearing in front of the New York Human Rights Commission that the speed of the wheelchairs made them so dangerous to biped runners that they should not be allowed to participate (McCarthy, 1979). The argument didn't fly, however, and by October 1980, the Human Rights Appeal Board issued a final ruling that wheelchair athletes had to be allowed to participate.

Think about the argument more theoretically. In any loosely liberal polity, one central notion of equality of is the idea that *opportunities* should be equalized. The difficulty is to figure out what it means: People differ in needs, inclinations and talents. Differential needs may mean that equal opportunity requires differential resources: Wheelchair ramps in buildings are a familiar example. Differential inclinations and talents mean that it can be difficult to tell whether someone lacks or has lacked equal opportunities: Maybe my relative poverty is a choice not to pursue the American Dream, or maybe I did pursue it but invested my money badly. In neither case is it obvious that I lacked opportunities comparably equal to others.

For these two reasons — that different needs require different resources and that inequality of achievement does not prove inequality of opportunity — Amartya Sen has argued that the best interpretation of equality is an *equal capability* to function as a human being (1985, 1992, 1993; see also Martha C. Nussbaum,

1992, 2000). People are equal when they enjoy the capability — whether utilized or not — to pursue the variety of things that society considers full human life. People are unequal when they are *denied* any such capability, whether as a result of intentional discrimination (explicitly racist, sexist or ableist beliefs, say) or structures that produce a discriminatory effect (people with disabilities systematically lacking access to educational resources, say).

The implications for disability are important. If we think that any human being is *prima facie* eligible for a full human life, then we have to be attentive, from the word go, to the widely diverse opportunities and abilities among people to reach it. This requires that even severe "natural" physiological limitations be rendered as costless as possible. "Natural" limitations include human- dependent actions such as accidents, but the idea is the same: If my capability is or gets limited, justice demands that the limitation be as costless as possible. The ideal, even if it is not fully realizable, is *that nature or accident denies no one the capability to function*.

Among the familiar implications of this view is the argument for why the state is not only justified but required to use extra resources for people with disabilities for, say, renovating buildings in order to make them accessible. The logic was also applicable in the context of the wheelchair marathon controversy in the late 1970s. *Washington Post* columnist Colman McCarthy (1979), for example, argued as follows:

I side with the handicapped. If the wheelchair is what they have been forced to use for transportation, then the wheels of their vehicle are actually their feet and legs. Why should either an accident of birth, or an accident on the highway or a war zone, disbar someone from sharing the roadway with the able during a marathon?

To deny the wheelchair users participation would be to deny them an equal opportunity to participate in a meaningful human activity; that the actual mode of their activity — wheelchairs instead of feet — is different is by itself no argument. They can have recognizably comparable activity even in the very same event. Insofar as there are genuine logistical differences because of the physical aspects of

the wheelchairs, providers of the services must try to accommodate them, instead of using the difference as grounds for denying the right to participate. In practice, that has been done, quite successfully, through measures like letting the wheelchairs begin their race a little before the runners or by letting blind athletes use guides.

All this should be familiar and in principle if not in practice uncontroversial. It still makes a difference, however, to what extent we take "reasonable accommodations" now explicitly required by the ADA to imply something like "compensation for misfortunes." Many people have tended to think of them on those terms: like the anonymous commentator in the runners' online forum I quoted above, they "may feel for the handicapped." This can help foster the idea that equalization is somehow equivalent to remedial education, itself an idea laden with a patronizing attitude and so a source of a stigma. When someone is stigmatized, her identity is "spoiled," as Goffman (1963) puts it. This isn't, in the first instance, about the goings-on in her head: the "spoiled identity" is the person's social identity, how others see her. One of the things people don't expect of "defectives" is excellence.

This is why the argument requires our interpreting the ADA as an anticaste principle: On that interpretation, to think that a person cannot or should not hope for an excellence is to stigmatize and so inconsistent with the demands of justice. That is also why the demands of justice are not met when wheelchair athletes just get to wheel through the course of the NYCM: They are, in some way, obviously participating in the event, but they are not participating in what makes the event what it is. They are specifically *denied* the richer opportunity.

But I have not yet offered an argument for why justice requires that wheelchair users be allowed to participate in *this* pursuit of excellence, on these particular terms. We also don't know how the argument so far applies to disability sport in general. For example, does the current arrangement for Paralympic Games — same venues as the Olympic Games, different time — satisfy the demands of justice, or violate them? To say that these issues are purely logistical is to sidestep the question: The equality-as-capability

model explicitly denies the primacy of logistical considerations.

Despite the legitimately bad rap the notion of "separate but equal" suffers from, it may sometimes be legitimate. That depends on why the separation exists, and that, in turn, on the internal meaning and logic of the practice in question. I now turn to the meaning and logic of competition.

V. Meaningful Competitions

Recall that one of the reasons I am focusing on sport is that it's a social practice where the notion of excellence is relatively straightforward. In sport, there are reasonably clear measures of excellence, of ranking participants, of measuring relative success. Competitors aim to do as well as possible and, ultimately, aim to win.

Of course, especially in recreational sports, many people *don't* aim to win; increasingly, people don't aim at excellence at all. They do it for health, to raise funds for a charity, to have fun with friends — in short, for recreation. Even so, the notion of competition is still partly constitutive of most such events: people do get ranked, whether they care about it or not, and winners do get awards. Given the nature of the practice, opportunity to participate in it on fully equal terms would mean an equal opportunity to *meaningful competition.*

Consider what "meaningful competition" means. "The hope of winning" might be one interpretation. The Olympic slogan *citius, altius, fortius* — faster, higher, stronger — captures this idea: There are straightforward objective measures of achievement, and excellence is ascribed to people comparatively by how they line up in displaying their prowess. The greatest praiseworthiness is due the person who outperforms everyone else because he or she has reached the goal everyone is after. It seems to follow, then, that for competition to be meaningful, everyone must have a realistic hope of being the winner. But this is impossible: people's talents and abilities vary widely, *both* because of agent-independent reasons ("natural" and "normal" distribution of talents, available resources, etc.) and for ones that do depend on the person's own efforts (e.g., practice). Especially in recreational sports the majority of people

have zero hope of winning, regardless of how much they might practice. At the same time, as Norman Daniels points out in his discussion of mental disability (1997, 282), the seemingly benign fact that talents are normally distributed does raise real questions of disability justice.

So another interpretation of "meaningful competition" might be to eliminate the effects of the luck of birth and other factors that don't depend on the person's own efforts. That way, the argument might go, competition would indeed be fair: The person who applied herself most diligently to practice would come out as the winner -- A for effort. The insurmountable difficulty with this approach, however, is that it is impossible to separate the factors clearly enough: While there is some agreement of what, say, genetic factors contribute to particular kinds of athletic prowess, these factors tend to be quite variable: I might be a good distance runner thanks to my natural motor efficiency (itself likely an genetic interaction effect); you might be good because of your congenitally high number of red blood cells. Second, there are agent-independent causes for those mental dispositions that motivate persons in pursuits of excellence. Attention deficit hyperactivity disorder (ADHD), for example, can impair a person's ability to excel academically or in an athletic pursuit (Sherrill, 1998, 515). Some of these are "natural," that is, something the person is born with; others may depend on forms of "nurture." And, finally, for better or for worse, social conceptions of excellence do, as a matter of sociological fact, incorporate both the appreciation for individual effort *and* intersubjective measures. A figure skater's quadruple jump is praiseworthy precisely because it is so difficult for anyone to accomplish, and no matter how much I train I will not merit similar appreciation if I can't even get off the ice. Sometimes "A for effort" makes no sense.

But the luck of birth can be taken into account to some extent. What happens in practice is that "excellence" gets relativized to some particular reference group. For a female figure skater, it is excellent to achieve a triple jump, for example. These groups are "ascriptive proxies": The groups are carved out in a way to make competition meaningful. The idea is that two randomly selected individuals from a given reference group should have an equal hope of beating one another on a head- to-head effort.

These classifications are contingent. Old categories can become pointless and new ones necessary. For example, in ultra-long distance running, some evidence suggests women are beginning to emerge as inseparable from men in terms of average and aggregate achievement, which suggests sex divisions may disappear from that particular event (Bam *et al.*, 1997; but see Coast *et al.*, 2004). That follows from the idea that the categories exist as contingent but necessary means for making competition meaningful. As soon as we realize this, it becomes obvious that the "original" categories and standards of excellence are equally contingent, and in fact, were usually created to make able-bodied men's competition meaningful (Boxill, 2003; Elias, 1986; McIntosh, 1979).

All of this applies directly to disability sport. The categories are more numerous but the logic isn't. "Classification is simply a structure for competition. Not unlike wrestling, boxing and weightlifting, where athletes are categorized by weight classes, athletes with disabilities are grouped in classes defined by the degree of function presented by the disability" (International Paralympic Committee, 2005a). Similarly, the logic of "open competition" — the "freedom to enter an event in which one meets eligibility requirements with respect to times and distances, with no consideration given to functional or medical classification" (Sherrill, 1998, 35) — is also a direct corollary of this understanding of meaningful competition. (Open competition *can* also be a double-edged sword in a world in which disability sport doesn't enjoy the popularity or appreciation of able-bodied sport: If the visually impaired runner Marla Runyan prefers to compete in the Olympics instead of Paralympics, it may seem to imply that the level of excellence in Olympics is greater.)

On this logic, it is straightforward that "meaningful competition" for wheelchair athletes would be to compete among other, similarly situated wheelchair users. Wheelchairs have an effect on athletic performance: On the average, in the aggregate, they make the athletes faster than biped runners. A separate competitive division for wheelchair users is a way of making sure competition also remains meaningful for runners. And because the type of wheelchair a person uses reflects her functionality, the logic also suggests why

there should be many, not just one, wheelchair categories: The average differences caused by the mechanical differences both change the nature of the endeavor and make an average difference in the outcomes (DePauw & Gavron, 1995; International Paralympic Committee, 2005a).

Still, this functional understanding of meaningful competition can seem to come in tension with ideas of excellence, however contingent the latter. There are many ways of carving out groups so that their aggregate and average performances vary. Why are some chosen over others? Why are some mandated by considerations of justice, as I argue, and others not? The concern — historically attributed, as I suggested above, to conservatives — is that a proliferation of categories will "dumb down" notions of excellence. "If everybody is special," a character worries it in the popular film "The Incredibles," "then nobody is" (Bird, 2004).

Although this may be true in the abstract, there is no obvious reason to believe that proliferation of categories by itself creates a slippery slope. Let's consider the issue with a recent category controversy. The newest addition in many endurance sports has been the creation of weight categories. In many competitions, heavier runners now get to compete in many races in their own "Clydesdale" divisions on the undeniable logic that in running, weight is functional: Carrying more puts one at a disadvantage to lighter persons. While commonplace in many other sports — wrestling, boxing — in endurance sports these divisions are highly controversial.

There are several reasons for the controversy (for a sample set of issues and opinions, see Anonymous, 2002). The most obvious one is that the demand for such categories is explicitly political, just as in (other) disability sports: activists in organizations like Team Clydesdale (http://www.teamclydesdale.com/) make a political demand for inclusion (see also Kirkland, 2003). This can generate opposition for many reasons; the most important is based on the widely held but most likely false belief that a person's weight is more or less up to her, and that, therefore, *she* can make competition meaningful for herself simply by losing weight. This is analogous to the argument that if I fail my examination because I haven't studied, I

have no cause for complaint. The background principle is what some call "luck egalitarianism" (Arneson, 2000; for a critique, see Anderson, 1999): Equality requires eliminating the "arbitrary" effects of agent- independent factors for how a person's life turns out, but it doesn't require compensation for the opportunities she herself has squandered. This argument depends on the extent to which weight really is within a person's voluntary control — there are good reasons to think the voluntarists exaggerate it (see, e.g., Crespo & Arbesman, 2003) — and the outcome of the weight category debate in that respect will partly depend on the outcome of the larger empirical and political controversy.

But the general point is that a weight category in these endurance sports is wholly contingent, the justifiability of which depends on social conventions and *on political agreement among participants*, not on any obviously undeniable facts. Facts matter, of course, as the controversy about the causes of a person's weight suggests, but equally significant is the interpretation of the facts and the decision about which facts are salient and which aren't. The key open question for society to settle is, Can heavy endurance athletes' performances count as excellence? It's contingent, but not arbitrary: it depends on what kinds of *reasons* end up winning the day. At the moment, there is no agreement on weight. Issues are significantly more settled but nevertheless analogous in the case of disability, sex, and race: Society's contingent — if in some quarters grudging — view is that category separation on the basis of disability and gender is legitimate, whereas race-based categories would now indeed seem insidious (even if race might make a functional difference in terms of achievement: see Meyer, 1998; Littwin, 1998).

So meaningful competition is determined by social conventions, which, in turn, reflect social values. There is no reliable decision principle that would settle the case of which differences ought to be regarded as salient and which shouldn't, even when anti-discrimination law tells us to be careful with some particular ones. First, sometimes we can't even agree on how we should conceive some social practice. (Is education about producing a skilled workforce or informed citizenry?) Second, even when we agree on the *point* of a practice, say, sports, we may disagree about what it

means. But, again, the disagreements needn't be irreconcilable. I have tried to suggest why wheelchair athletes have a compelling logic for their inclusion: Long-distance endurance sports are about endurance, and it would be unfair to ban people with disabilities who nevertheless can test their endurance. At the same time, it would *not* make sense to allow someone with an electric wheelchair to participate. But consider the Casey Martin case in contrast. Although I find the U.S. Supreme Court's decision correct, it strikes me as less *obviously* correct. There are difficult open questions: *Should* it be a constitutive rule of golf that competitors walk between holes, as the PGA Tour argued against Martin? And even if it not, might the PGA Tour or similar institution unilaterally change *its* conception of measuring golf excellence to include such a rule? There are better and worse reasons, and sometimes we come to agreements. But the questions aren't settled anything beyond the contingent reasons we all can try to marshal.

VI. Conclusion

I have argued that voluntary civil-societal practices such as sports can come within the purview of justice and that we can argue — on the basis of contingent reasons and against the backdrop of anti-discrimination laws like the ADA — that a person with a disability can have a defensible a right to meaningful competition. *What* meaningful competition is within a given set of practices and *how* the right is interpreted can vary widely. Moreover, it depends, as I have argued, on how the practices in question are understood. Competition in sports is about excellence, and the political arguments therefore are about the nature and meaning of excellence. I have suggested some of the ways in which supporters of disability sport have shown disability to be perfectly compatible with athletic excellence, but I have also pointed to the ways in which these questions are unavoidably contingent. For that reason, they often remain — appropriately — political.

What, then, about cases where disability sport appears organized on a "separate but equal" principle? Consider first: insofar as the "anticaste" principle against the stigmatization of people with disabilities is correct, the Achilles Track Club athletes' demand that

they be allowed to participate *as* athletes in the NYCM and not in some parallel event is significant: Stigmatization and its opposite, respect, are social *expressions.* In this case, for example, the millions who line along the streets of New York to watch the event are, whether intentionally or not, part of *a collective expression of respect* for the participants in the event. Now consider a slightly different case: the opening ceremonies of the 2000 Sydney Olympics. There, one of the final torch bearers was Betty Cuthbert, a wheelchair user, and the final one an Australian Aboriginal athlete, Cathy Freeman. We could interpret this as distasteful tokenism that attempts to hide Australia's enduring stigmatization of people with disabilities and its indigenous population. But we can also — even simultaneously — interpret Cuthbert's and Freeman's inclusion as a genuine expression of equal respect for people with disabilities, racial minorities, and women (Cahill, 1998, 1999). One thing about sport — high visibility Olympic sport in particular — is that it *says* something, in addition to what it *does:* whether it changes people's attitudes and beliefs, whether it hides existing practices of discrimination and oppression, its symbolic message does matter as a kind of political recognition (for a distinction between saying and doing, see Austin, 1979).

I conclude by flagging but not answering the question of whether the separation of Paralympics and Olympics is a problem from the perspective of thinking of athletes with disability as capable of comparable and equal excellence with non-disabled athletes. On the one hand, we may point to a trajectory of greater recognition of Paralympics by important institutional players such as the International Olympic Committee: the events may be separate, but the message surely is that they are *more* comparable than they used to be (Dickinson, 1996; Leal, 1992; Pingree, 1998; Mascagni, 1996). And we may join Simon Darcy (2003) in sounding a cautious note of optimism about the actual arrangements in the 2000 Sydney Paralympics, even if they were far from perfect and even if their long- term effects on social attitudes toward disability may be uncertain. That may suggest that the separateness of the events is not a problem. But on the other hand, it may be the very separateness that causes the wide disparity in spectatorship and attendance: in Sydney, for example, spectators at the Olympics outnumbered the spectators at the Paralympics by a five-fold

(Australian Bureau of Statistics, 2002). And whatever official recognition of athletes with disabilities got as equals, Darcy's evaluation suggest, they got through political pressure from disability activists (2003, 753). It is, in short, not yet clear yet that a separate event really recognizes a comparable excellence.

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