Miles to Go: Some Personal Reflections on the Social Construction of Disability

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The most serious barriers facing any individual with a disability are socially constructed and are not inherent in the "handicap" itself.

David M. Engel & Alfred S. Konefsky “Law Students with Disabilities: Removing Barriers in the Law School Community”

The greatest handicap I face as a visually disabled person is not the physical limitations occasioned by the poor eyesight, but rather the attitude of others toward my disability. The label “physically challenged” obscures the reality of the social construction of disability.

The “social construction” of disability refers to the way an able bodied conception of disability magnifies its consequences. The social construction of disability assesses and deals with disability from an able bodied perspective. It includes erroneous assumptions about capacity to perform that come from an able bodied frame of reference. It encompasses the failure to make possible or accept different ways of doing things. It reflects a preoccupation with “normalcy” that excludes the disabled person.

A concept like the social construction of disability is not easily understood in the abstract. Where attitudes are deeply ingrained and operate mostly at a semi-conscious level, a very hard-nosed look at reality is necessary to understand the phenomenon. This article attempts to shed some light on the social construction of disability by recounting and sharing personal experiences.

The reliance on personal experiences is a way of providing concrete illustrations. I have made a deliberate choice to use as examples things that have happened to me personally. This is not because my experiences are unique or especially compelling. Quite the contrary, the premise that lies behind this discussion is that these experiences are representative of

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*I would like to thank Patricia (Trish) Monture who, as a friend and colleague, and through her writings, helped me to find the strength to let my voice be heard. I would also like to thank the many friends, colleagues, and family members, too numerous to mention, for their helpful comments.

1. (1990), 38 Buffalo L.R. 551, at 567. The same point is made by David Lepofsky in “Disabled Persons in Canadian Law Schools”, delivered to the Canadian Council of Law Deans on November 8, 1990, at 3.
a widespread phenomenon. While I feel at liberty to use my own experiences, I do not think I have the right, in the words of Patricia Monture, to appropriate other peoples’ pain.\(^2\)

The personal experiences to which I will be referring relate to my connections with Dalhousie Law School, as a student, a job applicant, and a faculty member. My story concerns Dalhousie Law School only because that happens to be where I have spent most of the last dozen years of my life. I consider the story to be worth telling, not because Dalhousie is particularly notorious,\(^3\) but because I am convinced my experiences at Dalhousie are quite typical.

Speaking out on issues of disability is a relatively new venture for me. For most of my life I have suffered silently. If one complains, one is likely to alienate people and it has not been my style to consciously alienate people. I also think my passive response was, in effect, a strategy designed (unconsciously) to make my disability as invisible as possible. But I no longer wish to do that. Patricia Monture’s discussion of racism is something with which I find strong parallels in terms of disability.

What I attempt to do is to re-claim racism, as a word, and as a concept, and as an experience. I want it to speak to me, of me, for me. I am tired of it defining someone else’s experience who has the luxury of not living racism. Racism, both as a concept and as an experience, creates a subject outside of me and leaves me being object. The fact is that racism creates an unnatural inversion. It is therefore a neat little trick which further oppresses the individual or collective that is struggling to overcome their oppression. This is the neat little trick. As soon as I point out to most people, “HEY, that’s racist”, it is distancing. You become defensive. You blame me for calling you names. I feel guilty as I had never intended to hurt you. That is not my way. I have the responsibility to be kind. Kindness is one of my original responsibilities. The power to define my own experience is then taken away from me because racism is a bad word!

Racism is turned against the ‘victim’ in this kind of a labelling process.\(^4\)

That phenomenon has a powerful effect of silencing. Saying nothing in reaction to hurtful things related to my disability seemed to be the

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3. Dalhousie Law School has in fact made a point of addressing issues of discrimination, especially in relation to gender and race. The affirmative action hiring policy has been taken very seriously in the Law School, such that the gender balance on faculty has changed dramatically in the last dozen years. The Indigenous Black and Mi’kmaq Program is attempting to overcome the gross under-representation of Nova Scotia Blacks and Mi’kmaqs in the legal profession. Action on the disability front, however, has been less concerted.

"polite" thing to do, and the path of least resistance. But the path of least resistance is also the path of no accomplishment. If the social construction of disability goes unchallenged and the disabled perspective never gets articulated, there is no reason to expect any changes in offensive behaviour and attitudes. Able bodied stereotypes of disability will continue to be perpetuated unless there is an effort to expose them. By using my reflections on my personal experiences as a means of conveying a message that has more general application, I hope to make at least a small impression in the mortar of the social construction of disability.

I need to explain the nature of my disability to give the context for my discussion. People often seem quite reluctant to ask about my eyesight, but in fact I do not at all mind talking about it. The only thing that offends me is the hesitation about asking, because it seems to indicate that my poor eyesight is something about which I should be ashamed. This is but a further reflection of the social construction of disability.

The specifics of my eyesight are as follows. Using a regular eye chart, my left eye tests at 20/300, and my right eye tests at 20/200, in other words, what a normal eye can see at 300 feet, my left eye can see at 20 feet and what a normal eye can see at 200 feet, my right eye can see at 20 feet. The standard definition of blindness is 20/200 in the poorer eye, which I fit on the basis of the regular eye chart. However, using low vision charts (which have a 10 foot rather than a 20 foot base, and are more accurate in the low vision range), my better right eye tests at about 10/80, in other words, not quite blind.

The effect of my eyesight on my daily life is, for me, not that big a deal. I can't drive a car, or even generally recognize people in a car. People sometimes think I am being a snob when I do not acknowledge their greeting from a passing car when I am walking. What they do not realize is that, not only can I not see their gesture or recognize who they are, but also in most cases it is only on faith that I assume there is in fact a person driving the car. If I were judging solely by what I see, I would have to seriously consider the theory that most cars drive themselves!

I do not see well enough for glasses to be of any real use to me. My poor eyesight is not the usual difficulty with focus that can be corrected; rather, the essential problem is that a substantial number of the cones in my eyes do not work. What I really need is magnification, not a focus correction. Where appropriate, I use seven power (pocket size) binoculars, a four power monocle, or an twenty dioptre magnifying glass. With all of these devices, the field of vision is very narrow, so if I can get by, I use nothing. My usual reading posture is with my nose almost touching the page; I have to physically move my head from side to side to be able to read the full line of text.
All of this is second nature to me; I have been doing it all my life. From my perspective, what ultimately matters is that I can do most of the things I want to do in spite of my poor eyesight. We all have various degrees of ability to do a wide range of things. Although I do not see as well as most people, there are lots of things that I can do just as well as, if not better than, most people. We all learn to adapt our lives to the capabilities that we have. Yet my poor eyesight tends to be accorded a special significance.

My poor eyesight is part of the fact that I am an albino. That is an inherited condition (through recessive genes) which involves a lack of pigmentation. It means I have (and have had since birth) fair skin and white hair, which are the telltale signs of lousy eyesight. The association of my poor eyesight with albinism means that I am not in a position to really hide my disability.\(^5\) It also means that, in addition to the reaction to the fact of my poor eyesight, I also have to cope with the reaction of the fact of my different physical appearance. Overt reactions to the albinism as such are relatively rare in my experience, and are not actually any part of my experiences at Dalhousie.\(^6\) However, I suspect that the reaction to the albinism contributes to the reaction to the eyesight. Overt manifestations of negative reaction to the eyesight are also relatively infrequent (and sometimes a reaction may be vague enough that it is difficult to tell whether the eyesight is a factor), but I have no doubt that they represent a much more widespread unstated reaction.

In assessing how people respond to my eyesight, it is not their intent that is necessarily the problem; they may in fact be acting with the best

\(^5\) Engel and Konefsky, *supra*, note 1, point out that many students with an “invisible” disability go to great lengths to hide the fact of their disability, a reflection of how high the socially constructed costs of disability can be.

\(^6\) Overt reactions to the albinism are still something I have not figured out an effective strategy for dealing with. When walking down the street, minding my own business, I do not know how to respond to someone who says to their friend: “look there’s an albino” and starts to laugh. My reaction to such situations is to try to hide the pain and pretend that I do not hear, although in truth my hearing is quite good, and a significant part of how I cope with poor eyesight.

Nor is this simply a function of a few rude, nameless people. One of the most disturbing pieces of literature I have ever read is a short story by Audrey Thomas, whom I otherwise admire as a writer. The story “Omo” in the collection *Two in the Bush and Other Stories* (Toronto: McClelland and Stewart 1981), pp. 19-47 is about a very sinister and evil character; the overwhelming impression I got in reading the story was—what else would you expect; he’s an albino?

I have not seen, nor do I wish to see, a movie reputed to be one of the 10 worst movies ever made. Right up there with “I Saved Hitler’s Brain” and “The Attack of the Killer Tomatoes” is a movie, the name of which I do not recall, featuring an all albino cast. (I refuse to put any effort into finding out the name; that effort would give the film a degree of legitimacy I do not wish to accord it.) I do not need to know anything more about this film to realize that it exploits the perceived “freak” status of albinos.
of (though in my assessment misguided) intentions. What ultimately matters is the effect of what is happening, and the ultimate message of marginalization that is conveyed about disability. My experiences emphasize the importance of the legal position, under both human rights legislation\textsuperscript{7} and s. 15 of the \textit{Canadian Charter of Rights and Freedoms},\textsuperscript{8} that intent (whether malicious or not) is not a requisite element of discrimination. It is important to emphasize this point because many of the events I will be discussing involve people whom I consider to be my friends.

The following accounts of several incidents I faced as a student, a job applicant, and a faculty member revolve around variations on a common theme: the difficulties that able bodied persons have in coping with the different ways that a disabled person has of doing things.

I. \textit{The syndrome of: 'your discomfort with my difference becomes my problem'}

As a student at Dalhousie Law School from 1979 to 1982, my eyesight was not, as far as I was concerned, a significant factor. There were minor irritations involving problems in reading the board or in reading notices; these kinds of things were minor because I had gotten so used to them. (I did not at that time have the monocle that has now largely solved those sorts of problems.) I also had more problems than most students in coping with poor quality reproductions in some casebooks. But I never made a real issue about these sorts of things.\textsuperscript{9} However, there was one incident in my third year in which it became starkly clear that my poor eyesight was a significant factor to others. This incident is my most vivid memory of my three years as a law student.

The incident in question involved a mooting exercise in which I was making oral submissions. As was typical for this course, the person hearing the submissions was a prominent lawyer from outside the Law School, in this case a sitting judge (since deceased). Because I was being evaluated for my performance, by both the judge and the course professor, the nature of the reaction to my eyesight was quite explicit. As far as I can tell, that is the only part of this incident that is out of the ordinary.

\textsuperscript{9} As a faculty member, I now find that I do raise an issue when I notice other faculty members not being sensitive to students who cannot see the board, etc. This is in part because I have become more militant, and in part because I still find it easier to complain on someone else's behalf, rather than my own.
During my presentation, which was made from a seated position (as was everyone else’s), I was relying very heavily on notes. For me to do that (especially given the optical devices available to me at the time) meant lowering my head almost to the table to look at my notes, and then raising my head to speak. (It may be that I did not always wait until my head was back up before speaking, such that some of what I said may have been difficult to hear.) In other words, my head was bobbing up and down throughout the presentation.

At the end of our presentations the judge gave us general feedback. I remember my reaction to what he said more clearly than what he actually said; if anything, my reconstruction of the event is more charitable to him than the event itself. I should also note that there was not the slightest doubt that his remarks were directed at my eyesight. His comments were to the effect that my strengths lay in research. Although he probably meant it to be a compliment, the very clear message that came through to me was that I should not be seen in public. Although I was extremely upset by the remark, I was “too polite” to say anything. Furthermore, I did not have enough confidence to confront him. Neither the professor nor any of the other students said anything either. It was clear from conversations I had with some of the people after the event that their reason for silence was neither politeness or deference, but simply that they had not noticed anything particularly wrong with what he had said. It made the point that the judge’s reaction was not an aberration, but very typical. That is what gives this incident its real significance.

The same basic attitude was also present in the way the professor evaluated my performance, although he reached a different conclusion, that I should change the manner of my presentation. In some respects, the way the professor reacted was one of the best things anyone has ever told me, but in other respects, it was one of the most blatantly discriminatory things that has ever happened to me. The positive part of the professor’s reaction was that he came down very hard on me for relying so heavily on notes. He knew that I “knew my stuff”, and did not need to be relying on notes in the way that I had been. He helped build my confidence to realize that I could give a presentation without relying much, or at all, on notes. That is in fact something I can do without too much difficulty, since I have a good memory. The negative side of the professor’s reaction, however, was how far he took the point. Although he gave me a (generous) mark of 9/10 for the substance of my presentation, he gave me

10. Comments made during my time as a legal counsel to the Canada Labour Relations Board regarding my experience as an appellate advocate also reinforced the conclusion that this was a typical reaction.
a failing grade of 4/10 for the style of my presentation. The overall mark for the course was very high, such that the failing mark on the presentation has never come back to haunt me as part of a transcript, but it was the message conveyed to me personally by that failing grade that was of importance.

Although I raised some questions with the professor at the time about the account (not) being taken of my disability, I did not unequivocally challenge the standards of evaluation being used. I was not then able to fully articulate the issue as one of a social construction of disability, and so the professor did not respond in those terms. Whereas part of me thought there was a serious problem typified by both the judge’s and the professor’s reaction to my presentation, another part of me wondered. If I were the only one who saw a problem, maybe there was none. And since, as far as I knew, there were no other significantly disabled students at the Law School, nor any disabled faculty members, there was no one I could look to for reinforcement. The social construction of disability is so powerful that it begins to convince the disabled themselves that one is inferior if not “normal”. It took a long time before I fully appreciated the nature of that phenomenon. For reasons I am about to explain, I now have no doubt that there was a problem in how my performance was evaluated. The fact that others did not recognize the problem was not an indication of no problem, but rather a reflection of just how deep seated the problem was and is.

I do not pretend that my presentation was a very good one in terms of style – I was clearly relying too heavily on notes for it to be a strong presentation. And if there were some difficulty in hearing me at times, that obviously detracts from its effectiveness. Furthermore, the way I said things may not have been the most convincing. All of those sorts of criticisms I can readily accept. But what is worth noting is what made the difference between a poor performance and a failing one. What is problematic from my perspective was the fact that my performance was judged as grossly substandard because I was being assessed on an able bodied standard. Let me elaborate.

Verbatim reading of material is generally heavily frowned upon (although it is quite standard at academic conferences). Significant reliance on notes is, however, widely accepted as long as it is not excessive. I was excessively relying on notes, and was justly criticized for that. But the criticism was magnified because of the way I am forced to rely on notes, as a consequence of the fact that I read an inch or two from the page instead of a foot or two from the page. What an able bodied person can do that I cannot do is make a subtle shift between looking down at my notes and looking up at those to whom I am speaking. When
normally sighted people rely excessively on notes, (as opposed to actual reading of text) it is considered a minor difficulty. When I do it, which entails sticking my nose almost on the page, it is considered an abysmal performance. When I rely heavily on notes, it is very obvious that I am doing it, but it is not hard to tell when normally sighted people are doing it – even I can see (and hear) that in a presentation. So why is it such a problem when I do it? I think it is clear that expectations of an oral presentation are based on the way able bodied people perform, and when a disabled person does not conform, that is considered distracting. (It was so distracting from the judge’s perspective that he thought people should not be exposed to it at all.) I think this is symptomatic of a general discomfort of able bodied people with the different ways that disabled people have of doing things. Although some differences are readily accepted, many are not.

In recent conversations with the professor in question, he has raised the dilemma of how one deals with a student who does things in a way that others, however unfairly, will judge substandard in the real life of lawyering; his point is that this is a reality that must be confronted. There certainly is something to this point. But it is one thing to have a frank discussion about how a particular behaviour will be perceived and what one wants to do about that. It is quite another to give a failing mark that says, in effect, this is the way life is, and there’s no problem with it.

I think there is a clear analogy to issues of gender. The professor would never have dared to say that he was giving me a lower mark because I am a woman, and this area of law was one in which it would be difficult for a woman to break into. The professor would have recognized such a comment as blatantly sexist, even though it was quite true that this area of law was quite male dominated and oriented. He would have recognized this was not a problem that reflected on my capacities as a lawyer, but as a systemic problem about sexism in the legal profession that had to be confronted. The fact that my disability was not analysed within the same framework is an indication of just how far there is to go in tackling the social construction of disability.

Many may contest the analogy just drawn, largely because of a distinction between what one is (which is accepted as an invalid basis for judging performance) and what one does (which is assumed to be a valid basis for assessment). To me, this is a false dichotomy.\footnote{11 At a recent seminar that I gave, this was accepted up to a point by the professor in question. As an example, he suggested that standards should be adjusted to take account of the fact that women tend to have softer voices; i.e. that it could be acceptable to have submissions made a shorter distance away or with the use of a microphone.} In many ways,
what you do is intimately connected to what you are. It is not enough to simply have an official policy that all are welcome. The more pervasive question is whether people are, nonetheless, expected to act like men, like whites, like heterosexuals, like middle class, and/or like able bodied people. If people are expected to act as something they are not, they are either doomed to failure or are robbed of part of their identity.

“Objective” standards of performance need to recognize and accept that there are different ways of doing things, none of which is inherently the best way. Translated into legalese, it is not a “bona fide occupational requirement” or a “bona fide justification” to say that this is the way it has always been done, or the way most people do it.

If perceived problems in the performance of a disabled person are really simply a reaffirmation of the way able bodied people usually do things, the standard of assessment needs to be re-evaluated. In my experience there is a long way to go in avoiding the expectation that, in many contexts, disabled people must act like able bodied people in order to be accepted.

Against this background, I have faced what are, for me, problematic choices in how to deal with the reality of how I know people will generally react to me in oral presentations. One strategy is to avoid the issue by simply never giving oral presentations; in choosing to become a teacher, I have obviously rejected that strategy. The strategy I have adopted is, generally, not to rely much, or at all, on my written notes, but to rely on my memory instead. I have struggled with the question of whether this is a cop out, whether it is simply caving in to the pressures to act as if I were not disabled. I have tried to convince myself (with considerable, but not complete, success) that it is not a cop out because it is a better presentation, even for an able bodied person, to do it without looking at notes. It is generally easier to hold interest when the speaker’s mind is currently engaged rather than regurgitating a prepackaged product. But although it is generally better for anyone to give a presentation without looking at notes, the point still remains that there is a greater premium on my doing this than is the case for most people. There is a double standard at work. When I now get compliments after giving a lengthy presentation without looking at a single note, I often do not react very well to the compliment. It is not that the particular person offering the compliment is offensive, it is the entire context in which the comment is made that I find troubling. The plain truth is that, to a significant extent, I speak without reliance on notes because I have to. I do it because it relieves others of the discomfort of having to confront my disability, discomfort that would likely translate into a negative assessment of me. People are slow to recognize that there are more ways than the able bodied ways of doing things, that the able bodied way is not the “best” way.
II. The syndrome of: ‘assessing the ability of the disabled from an able bodied frame of reference’

The above discussion starts to make the point that the social construction of disability assumes inability to perform far beyond the real physical limitations imposed by the disability. The refusal to accept different ways of doing things as adequate is one level at which this takes place. The effect on the disabled person can be even more profound where there is a failure to acknowledge even the possibility of a different way of doing things.

I make this point based on my general observations of how able bodied people often assess the capabilities of disabled people. There is a tendency to assume there is only one way to do things, but even where the analysis progresses beyond that, the assessment is still stacked against the disabled person. It is an easy trap for able bodied persons (subconsciously) to look at the situation from the perspective of how they would cope if suddenly afflicted with that disability. More specifically, the attitude often seems to be: “how would I cope in the first five minutes if I were suddenly afflicted with that disability?”. If the question is posed in that way, the answer is almost invariably: “I wouldn’t cope very well at all”. If this kind of approach is transposed onto the disabled person, the disabled person is doomed from the start. What this fails to recognize is that disabled people learn to cope with their disability. They develop skills of doing things in a different way. They develop skills that able bodied people are never required to develop. They rely on other senses to compensate for the weakness in one sense, etc., etc. In my case, my hearing is quite good, so that I depend on oral cues, and I rely substantially on voice identification. (When working for a summer in a credit office, I once cashed a cheque without asking for identification on the basis that I recognized the voice of a local radio personality, although I did not have the faintest idea what he looked like.) As noted above, my good memory also helps me compensate for my poor vision. And although most people find it hard to imagine having to read the way that I do, for me, the way that I read is quite natural and easy. Again, this all comes back to the point that there is more than the able bodied way of doing things.

There certainly are limits. There are things that are rendered either impossible or highly dangerous because of a disability. I would not want to be in or near a car that I was driving. But it is all too easy to exaggerate the limits. In the context of visual impairment, the fact that people find reliance on their sight useful does not make it essential. It is also important to realize that technology advances can make possible things that were previously impossible. Assumptions of inability can be based on reality, but they can also be purely a social construction.
In a minor way, the relevance of this point came home to me directly during the interview process the first time (in 1985) I applied to teach at Dalhousie Law School. I do not attribute the fact that I did not get the job - on this occasion to the incident I am about to relate.\textsuperscript{12} I was in fact not all that upset that I did not get the job. (It is worth noting that, in contrast, the professor who gave me the failing grade on the presentation seemed to be quite perturbed by the fact that I had not gotten the job.) Had I known that I would get the job a year later, I would not even have applied the first time. But all of that is really beside the point.

The incident in question arose during the series of interviews with individual faculty members. Because I was a former student, I already knew most of the faculty members, which made it easier for conversations to be quite direct. In one of the interviews my eyesight came up in the conversation in a way that I did not find particularly tactful, but that one I simply put down to sheer tactlessness. More significant was a conversation with another faculty member who directly asked how I would compensate for my poor eyesight in my teaching style. Although I was a bit taken aback that an explanation was necessary, it was a perfectly legitimate question, and I had no trouble in answering it. I am not offended by someone who is curious about how I compensate for my poor vision where the assumption is made that accommodation is indeed possible. But it was his reason for asking the question that was problematic. He said he was asking because he wanted to be able to pass on the information in response to a conversation in the faculty lounge in which two unnamed colleagues had raised some objection to my appointment on the basis of my eyesight. At least as related to me, this conversation did not reflect a curiosity about how I would compensate, but an assumption that it could not be done. There is a world of difference between the two. The faculty member describing the conversation went on to say that he thought that my eyesight was not the real basis for the objection, but that he wanted to be able to respond to the stated basis for the objection in any event.

I did not press for any details about this conversation. Nor did I say anything to indicate how offensive I found this conversation, though I preferred to know about it rather than have it hidden. But as far as I am concerned, the one factor that was not relevant to my suitability for the

\textsuperscript{12} I do not have any concrete basis upon which to conclude that my disability has ever caused me to be denied a job. However, there are circumstances that make one wonder. When a rejection comes with indecent haste following an interview, giving as the reason my areas of interest (which were quite apparent from my curriculum vitae, and thus obvious without an interview), I can only wonder about the relevance of my disability, which would not have been evident without the interview.
job was my eyesight. The conversation was offensive whether or not my eyesight was the real basis for the objection. It has occurred to me that this element of the story may have been included to try to make the conversation sound less offensive. If so, that did not work. If anything, it made it more offensive. For even if the eyesight comment were masking something else, it meant that the individuals involved thought it was safe to object to me on the basis of my eyesight, but not safe to object to me on the basis of something else. That speaks volumes in terms of how vision disabilities are assessed, and shows how far there is to go. Although racism and sexism have certainly not been eradicated, by the time of my interview people had realized that you are not supposed to say that someone should not be hired because of being a woman or a Black. Yet there were, apparently, some who had not figured out that you are not supposed to say that someone should not be hired because she is disabled.

III. The syndrome of ‘we’ll accommodate your disability by imposing an undue burden on someone else’

As a faculty member, I have run into some instances of overt negative reactions to my different ways of doing things, but the more noteworthy issues relate to the manner in which my disability is accommodated, in the few circumstances where some particular accommodation is necessary. There are two incidents worth mentioning, both relating to the issue of how the costs of accommodating disability are distributed. That the issues have reached that stage is a sign of progress, because the need for accommodation is not itself being questioned.

There is time and effort associated with tackling discrimination and inequality and, particularly in the context of disability, there are often specific costs associated with accommodating the disability. A commitment to equality necessarily entails accepting those costs. While doing nothing places an undue burden on the victim of discrimination, care must

13. In class, when I want to read out a short passage from the coursebook or a statute, etc., I use a four power monocle which enables me to read without my voice getting lost in the page. In the first or second class, I explain to the students what the monocle is, and what I use it for, as part of a general explanation of how my eyesight affects my teaching. I generally try to make a joke about the monocle to try to relieve any unease students may feel about it. But on two occasions, students started laughing at the monocle before I got to the joke. In neither case did I say anything which displayed the fact that I was offended. With 20/20 hindsight (the only kind of 20/20 vision I can ever purport to have), I should have said something to indicate why I considered the laughter inappropriate.

Also during the explanation of the effect of my eyesight on my teaching, I ask students in large classes to come to me outside of class to introduce themselves. I explain that I have trouble matching up pictures with distant faces, especially when the pictures are a year or two old. Although some students accede to my request, most do not. My request is out of the ordinary; it is not something they would expect to do with their able bodied professors.
be taken that in remedying the discrimination no undue burden is placed on others. Discrimination is a systemic problem; the responsibility and costs of remedying it must be spread systemically.

In one particular incident I considered that the suggested cure was worse than the disease because of the failure to recognize this point. This incident also has an element of able bodied people acting unilaterally, and not letting the disabled person define her own needs. The factual context is a bit complex, having to do with the physical attributes of particular rooms at Dalhousie Law School. Since the start of my teaching career at Dalhousie, there had been one seminar room that I, most of my colleagues, and most students, hated as a classroom. Room 205 had never been designed as a classroom; when I was a student it was part of the print shop. It was too small to be anything but a seminar room, but it was too long and narrow to be an effective seminar room. Furthermore, there was only a single row of overhead lights, which made the lighting poor; the room’s use as a seminar room effectively removed any opportunity of using table lamps to compensate. Accordingly, although the room could be made more or less adequate for other purposes, there really was nothing that could be done to make the room a good teaching room. In contrast, room 305, another seminar room, was considered by everyone to be one of the best teaching rooms in the school.

I have trouble seeing students at the best of times, and it was particularly hard for me in room 205. Fortunately, the only times I taught in that room were in the second term of a full year course; the fact that I already knew the students made it a bit easier to cope with the room. However, I never asked to be exempted from room 205 because it did not seem to me that I had any more right than anyone else to avoid an inadequate room. I, like everyone else, had to grin and bear it.

In the renovations that followed the 1985 Dalhousie Library fire, room 205 was, much to everyone’s satisfaction, slated to disappear. In the term from January to April, 1989, and during the summer of 1989 there had to be temporary room allocations as we worked around the construction. During the summer, room 305 was slated to be the temporary admissions office. The Law School administration decided, without any discussion with faculty in general, to use room 305 as the admissions office for the January to April term as well, thereby removing one of the best teaching rooms and leaving in place the worst teaching room. Those of us who were teaching in room 205 that term were, to put it mildly, not amused.

When the issue was brought before faculty council I was one of several who objected to the room allocation, adding that I found it particularly

14. There were, however, some different opinions about that among the support staff.
difficult to teach in that room because of my eyesight. Although I did not explain it in these terms, I included the comment not as a plea for special treatment, but because my experience seemed to bring into sharper focus the general problem. I happened to be sitting next to the Dean, and I could tell that my comment had made an impression on him. But there was no further consultation with me. The next thing I knew about it was when I got a telephone call from a colleague saying that, although it was not yet clear whether the admissions office would shift from 305 to 205 for the term, the administration had decided that she and I would switch rooms, that she would teach in 205 and I would teach in another seminar room that she had originally been assigned. This colleague did not appear thrilled at the prospect of the switch, but she was prepared to go along.\(^\text{15}\) She seemed quite shocked when I said I was not prepared to go along. When I put this position to people in the Law School administration, they found it hard to believe that I was serious, and that I was not just using this as a tactic to try to get the general switch. I was indeed quite serious that I would not accept a switch that would be made just for me. (My resolve on this point was never tested, since the general switch was ultimately made.) As far as I was concerned there was a general problem, and the only acceptable solution was a general solution. To make the specific switch just for me would have been to ignore the general problem and make this other faculty member and her students suffer because of my sight disability. That is both unfair to them and unfair to me, because that kind of solution will ultimately create a backlash against me.

There are questions of degree here. Accommodating disability often does have effects on others which must be accepted as part of achieving equality. Human rights jurisprudence recognizes the necessity of accommodation, but only up to the point of undue hardship.\(^\text{16}\) I see the defence of undue hardship not as just an out for respondents, but as a safeguard to protect the credibility of the fight against discrimination. In an equity context, how could one defend the imposition of undue hardship?

In the context of the incident just described, I drew the line at the point where the room was basically inadequate as a teaching room. Where there are degrees of adequacy I do not have any difficulty in asking for and accepting preference for the room most conducive to my eyesight. The

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15. My reading of the conversation at the time was that she was reluctantly agreeing. Two years later, her recollection was that she would happily have made the switch. That difference does have some effect on how I assess the situation, but does not change the fundamental point made below.

issue becomes especially simple when, as has happened, I particularly like a room because of my eyesight, and a colleague who teaches at the same time actively dislikes the same room for another reason. I do, however, have difficulty asking for and accepting preference in avoiding a generally inadequate room. Although there is obviously plenty of scope for debate as to what constitutes undue hardship, it is ultimately not in the interests of those sought to be protected by human rights legislation to try to promote accommodation past the point of undue hardship. That can only produce a situation of one step forward, two steps back, if more resentment than understanding is produced.

The degree of impact upon others is also relevant to the last incident of my story. In many respects this last incident is the light at the end of the tunnel, because it does acknowledge that equality requires taking account of difference in a way that ultimately overcomes the effect of difference. Yet there is still an element of not sufficiently spreading the burden of the cost of accommodating disability.

I am composing this article on a computer. It took considerable time to work out the kind of computer set-up that would adequately serve my needs. Although "in a pinch" I can function with my nose almost touching a standard monitor (and there are circumstances where I have no other option), that is far from generally adequate. What is basically adequate (despite a few quirks) is to use a 21 inch television as my monitor, working in 40 character mode rather than the regular 80 character mode. This arrangement also requires an unusual kind of computer card. Although this set-up turned out to be considerably less expensive than some of the options I had considered, it was still several hundred dollars more expensive than a normal computer.

Dalhousie does not cover the cost of computer acquisitions by its faculty, and I thus made no claim for the basic cost of the computer. However, I did invoke the university's employment equity policy to claim the extra costs I incurred in order to accommodate my sight disability. The university readily agreed; it probably helped that the Dean of the Law School was, at the time, the co-chair of a university equity committee. Most of my Public Law students at the time, however, could not get past the point that the University did not fund the purchase of computers. They had trouble letting go of the notion that equality means identical treatment. In contrast, the university easily accepted that what they were doing was putting me in the same final position as normally sighted faculty members buying computers for their academic work. Although I got a contribution to the cost of my computer that others did not, the end result was that each of us had to pay the basic costs of a regular computer. This was a simple illustration of the proposition that, in order
to achieve equality, one sometimes needs to engage in different treatment of unequals.17

But the cloud around the silver lining was that the university has no specified funds for dealing with such expenses. My request had to be satisfied out of the Law School’s regular budget. This was not much of a practical problem because the amount of money in my case happened to be relatively small. But the question of principle still remains: why should a disabled person’s immediate colleagues alone have to bear the costs of having a disabled person on faculty? This point also has echoes in terms of gender, in relation to the costs of maternity leave replacements. In circumstances where the extra costs are high, there can be a powerful incentive not to even hire the person who will generate those extra costs.

In a case involving another faculty at Dalhousie, an issue of this sort recently went to arbitration in a context where the costs of accommodating the disability were quite high, and particularly noticeable when they had to be absorbed by a relatively small faculty. In this case the accommodation required was a full-time support person; thus the costs of the accommodation were an entire salary. The arbitrator found that the failure of the university to fund this salary from outside the faculty envelope did not amount to discrimination as prohibited by the collective agreement. Arbitrator Brent found such an “intangible price” of collegial resentment suffered by the disabled person not to be discriminatory.18

This characterization trivializes the argument relating to the distribution of costs. Especially in times of shrinking resources, if there are significant costs of accommodating disability that are narrowly spread, the resentment directed at the disabled person will likely be very acute. Until it is recognized that there is a general responsibility to respond to the need for accommodation, spreading the costs so that the costs of any individual are small, there will always be pressures on the person seeking the accommodation to make concessions. The more narrowly we spread the costs of accommodation, the easier it is to say that accommodation constitutes an undue hardship.

IV. The Larger Context

The lessons to be learned from my experiences are not specific to me or to my disability.19 While various disabilities require specifically tailored

18. The Board of Governor of Dalhousie College and University v. Dalhousie Faculty Association, unreported arbitration award, May 28, 1990 (Brent).
19. At a recent forum on disability at Dalhousie Law School, it was quite striking how similar were the points made by me and by a dyslexic student, although we had not compared notes beforehand.
responses, the general point is that disabled people need to be respected for the different ways they do things and are able to do things. The preoccupation with normalcy needs to be abandoned. There is a widespread assumption that the only thing necessary to alleviate the problems of the disabled is to remove physical barriers to access. That is part of the solution, but not the total remedy. The social barriers to access must also be removed; this requires a broad assumption of social responsibility and a rethinking of the able bodied view of the world.

This article’s reliance on an experiential mode of analysis is a typical feminist approach. This is not merely coincidental. The focus on experience in either context is to emphasize that one’s attitudes reflect one’s perspective and one’s place in society. The experiences of those not part of the dominant culture are, by that fact alone, different.

There are strong parallels between issues related to disability and those of racism, sexism, and homophobia. In all of these contexts the challenge is to learn to deal with, understand, and accept differences. In some contexts, difference needs to be respected in a way that ultimately ignores it; in other contexts difference needs to be accepted in a way that ultimately respects it. What too often happens is that difference is approached in a way that rejects it, in a way that marginalizes the person who is different. To elaborate, when a disabled person does something in a different way because of their disability, it is generally not a matter of conscious choice or preference; it is a matter of necessity. That is the kind of difference that needs ultimately to be ignored, although it may take a great deal of conscious effort to ensure that the effects of the difference are eliminated. At the other end of the spectrum the manifestations of difference are cultural, choices that are more or less deliberate. That is the kind of difference that needs not to be ignored, but to be accepted and respected.

Issues of disability, racism, sexism, and homophobia do not exist in isolation. We all find aspects of our self-identification in our gender, race, sexual orientation, and the range of our abilities. The interaction among these may be quite significant. I have not analysed my experiences related to my disability as being affected by my gender, because I do not have enough of a male comparison point to know whether there is a difference.

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However, there is literature which suggests that the social construction of
disability is gendered, that its burden falls more heavily on women who
are disabled than men who are disabled.21

It must be recognized that there are important distinctions between
issues of disability and those of racism and sexism. As regards disability,
there is not the same sort of cultural dimension that is part of respecting
racial diversity. The fact that women are at least half the general
population has a significant impact on the nature of the struggle compared
to that of the disabled, who are almost always a small minority in any
community. The numbers point is magnified by the different needs of
persons with different disabilities.

My experience is that, compared to racism and sexism, there is farther
to go in even acknowledging the problem of systemic discrimination
based on disability.22 I do not think it is an accident that the English
language has developed the words “racism” and “sexism”, but has no
comparable word for disability.23 Although the word “ablism” is starting
to make its way into the vocabulary, it is not exactly parallel. For although
the words racism and sexism connote a reference to the victims of the
phenomenon, the word “ablism” does not. To coin my own word, I think
“disabilityism” comes closer to capturing the concept. This point has
more significance than just playing with words. Language is an important
vehicle of social construction, and an expression of cultural identity.24

... the essential role that language plays in human existence, development,
and dignity. It is through language that we are able to form concepts, to
structure and order the world around us. Language bridges the gap between
isolation and community, allowing humans to delineate the rights and
duties they hold in respect of one another, and thus to live in society.25

The absence of the word “disabilityism” reflects an able bodied view
of the world.26 It is that able bodied view of the world that continues to
isolate disabled people from the community.

Sociology and Social Welfare.
22. A similar point is made by David Lepofsky, supra, note 1, at 1.
23. In “Equality in Legal Education...Sharing a Vision...; Creating the Pathways...” a report
of the Special Advisory Committee to the Canadian Association of Law Teachers, the term
“disability phobia” is used. For me, that term does not adequately capture the concept. “Phobia”
connotes to me an active and conscious aversion and hatred. While there are certainly elements
of that in reaction to disability, particularly in relation to mental disability, the word “phobia”
fails to take account of the more subtle and subconscious elements of the phenomenon.
26. In much the same way as gender biased language reflects a patriarchal world view;
Angéline Martel and Linda Peterat, “Naming the World: Consciousness in a Patriarchal
Iceberg” in Vickers (ed.), Taking Sex Into Account: The Policy Consequences of Sexist
Research, (Ottawa: Carleton University Press, 1984), at 43.