

## CHALLENGES FOR THE INABILITY THEORY OF DISABILITY

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WHY IS IT IMPORTANT to think about what makes a condition a disability? Many of us aim to shape social practices in a way that pays more attention to the situation of people with disabilities in society, and we expect the same from the state's social systems. Doing so assumes that there is a basis on which we can justifiably classify certain conditions as disability. But at the same time, we do not seem to have a good grasp of what it means to have a disability. As a result, we are unsure whose situation needs to be considered when it comes to the topic of disability. There is also the question of whether it is at all meaningful to think about moral issues specifically in relation to disability. For example, instead of thinking more specifically about the situation of people with disabilities who are affected by loneliness, why not think exclusively about what obligations the situation of *all* those affected by loneliness imposes on us? Justifying the need for such a special focus in moral reasoning requires an account of what makes something a disability.

In his 2020 paper "Disability as Inability," Alex Gregory offers a disability account that promises to fill the explanatory gap in our classificatory, social, and moral practices related to disability.<sup>1</sup> On his view, what distinguishes cases of disability from cases of nondisability is a particular kind of *inability* that is determined relative to the statistically most common body features and abilities in a reference class. It is this particular kind of inability that is shared by individual disabilities such as "motor neurone disease, diabetes, achondroplasia, deafness, a missing lower arm, and cerebral palsy" (23).

The inability theory ties in with two aspects of how we commonly use the term 'disability' in everyday life and therefore appears attractively simple and intuitive. These are the ideas that disability is about a limitation of abilities and a deviation from the typical or normal. There are already a number of proposals that take up these two features of our language use, but these proposals face

1 Gregory, "Disability as Inability" (hereafter cited parenthetically). Gregory has these aims in mind when he motivates and defends the inability theory (23, 24). In addition, there are reasons to believe that the inability theory is a promising starting point for addressing these challenges. I come back to this point below.

intricate difficulties.<sup>2</sup> The inability theory is an attempt to follow this natural line of thought in a way that avoids the problems of earlier versions.<sup>3</sup>

This paper starts from the assumptions that we need a disability account and that the inability theory is in many respects a convincing proposal for such an account. The main focus, however, will be the features of the inability theory that have costly disadvantages and therefore motivate the search for a disability account that can do without these features.

I proceed as follows. In section 1, I introduce Gregory's adequacy criteria for a disability account and his proposal for meeting these criteria—the *inability theory of disability*. Further, I present how he rejects common objections to the classificatory adequacy of the theory and what he sees as the main merits of his proposal. In section 2, I elaborate on some of the objections that have already been raised against Gregory's proposal or, more generally, against disability accounts that focus on ability limitations. I use four types of examples to show that Gregory's theory continues to struggle with problems of over- and under-inclusiveness, or fails to provide guidance for classifying disability. In section 3, I raise a more fundamental problem for the inability theory. I argue that it meets one of Gregory's central adequacy criteria for a disability account at the cost of not meeting the other. I conclude in section 4.

## 1. THE INABILITY THEORY

With the inability theory, Gregory pursues two goals:

I aim to provide an account of disability that picks out something real in the world—to offer a theory that carves nature at the joints. Such a descriptive theory would show what various disabilities have in common and explain what distinguishes them from other superficially similar phenomena. . . . In fact, we need a theory that carves nature at the joints *and* whose content is tolerably close to our everyday concept of disability so that we can recognize the theory as a more careful and complete version of that everyday concept. (24, 25)

- 2 Other disability accounts that assign a crucial role to disabilities include Amundson, "Disability, Handicap, and the Environment"; Hull, "Defining Disability"; World Health Organization, "International Classification of Impairments, Disabilities, and Handicaps," 143, and "International Classification of Functioning, Disability and Health," 213; Buchanan et al., *From Chance to Choice*, 286; and Begon, "Disability."
- 3 The way David Wasserman and Sean Aas include Gregory's proposal in their contribution "Disability" in the *Stanford Encyclopedia of Philosophy* suggests that Gregory's inability theory is being received along these lines.

His objective of developing an account that picks out something real in the world we might call the *realist criterion*. This criterion ensures that a disability account provides a standard of correctness that does not merely derive from our intuitive everyday classifications of disability. But by claiming that the theory's content should be "tolerably close to our everyday concept of disability," Gregory accepts a further adequacy criterion. We might call this one the *conservative criterion*. It says that cases of disability and nondisability considered paradigmatic in everyday judgments about disability are to be classified accordingly by the theory.

According to Gregory's final version, the inability theory says:

To be disabled is to be less able to do something than is typical, where this degree of inability (1) is partly explained by features of your body that are atypical and (2) is not explained by anyone's attitudes toward those bodily features. (33)

On Gregory's view, whether body features are atypical depends on which body features are statistically most common among people of the same sex and stage of development (for example, among female adults). Atypical inability is defined analogously. Whether the relevant kind of inability is present depends on which abilities and ability levels are statistically most common among people of the same sex and stage of development.

The inability theory allows that abilities are individuated in such a way that they can also be capacities to carry out relatively specific actions or activities, such as "playing a piano *with your fingers*" (27). Furthermore, according to Gregory, an inability can be present both when someone is completely lacking an ability or when someone has the ability but to a lesser degree. By means of this latter feature, the inability theory avoids one familiar objection, which says that disabilities—such as conditions that affect energy levels or achondroplasia—often do not prevent one from doing anything specific and are very variable in their effects.<sup>4</sup> On the inability theory, even if such conditions do not generally prevent one from carrying out a particular activity, they may have the effect that one can no longer carry out a particular activity for a certain period of time, such as working a forty-two-hour week (28).

Gregory also assumes that there is no sharp line between statistically typical and statistically nontypical bodily features or ability levels (29). In this way, he also addresses another objection, which claims that the inability theory is overinclusive. Someone can have slightly less typical body characteristics—"as

4 Barnes, *The Minority Body*, 17.

being a petite woman”—and still be within the range of the typical and therefore not count as having a disability, despite being less able in some dimensions.<sup>5</sup>

A similar objection aimed at overinclusiveness states that on the inability theory, the lack of statistically typical but intuitively completely irrelevant abilities such as tongue rolling and ear wiggling also counts as disability.<sup>6</sup> Gregory's response is to accept this result and instead explain away our intuitions that the lack of these abilities is not a disability. His explanation is that, strictly speaking, these missing abilities are disabilities, but to actually *describe* them as disabilities would be highly misleading because we usually describe something as a disability only when the condition is significant and practically relevant. In the context of such a speech act, one would say nothing false but something nevertheless inappropriate because it violates the generally applicable conversation maxim of relation, as specified by Grice.<sup>7</sup>

Another familiar objection to (in)ability theories of disability in general refers to persons with bodily characteristics that are statistically atypical (such as a certain skin or hair color) who are directly discriminated against because of these characteristics and who are restricted in their abilities as a result.<sup>8</sup> It is because of examples of this type that Gregory introduces condition 2, according to which only those inability theories that are not explained by the attitudes of others towards these bodily features are disabilities (33). Without this condition, someone who is not able to leave the house without restrictions due only to a certain skin color and attendant social prejudices against people with this skin color would count as disabled.

Gregory points to several important merits of his view. I present three of them here. First, he argues that the inability theory makes clear what all those apparently different conditions that we typically classify as disability have in common and thereby also provides “the most natural explanation of why we categorize these things together” (26). Second, he argues that the inability theory identifies a feature that also explains why disabilities are considered politically relevant. The inability theory makes it intelligible why we specifically think about requirements of justice with respect to people with disabilities and have social practices organized around the category of disability (26, 27,

5 The objection Gregory responds to in this way is raised by Elizabeth Barnes using the example of the petite woman against disability accounts that assign a central role to the lack of abilities (Barnes, *The Minority Body*, 17, 20).

6 Barnes, *The Minority Body*, 16; and Kahane and Savulescu, “The Welfarist Account of Disability,” 45.

7 Grice, “Logic and Conversation,” 46.

8 Barnes, *The Minority Body*, 19.

36). Third, he stresses that the inability theory provides us with a criterion that allows us to categorize unclear cases such as nut allergies (27).

There is another feature of the inability theory that is worth highlighting. The view does justice to the widespread belief that disability is normatively relevant without having to define disability as something bad or suboptimal.<sup>9</sup> As Gregory points out, the extent of our abilities seems to influence our amount of freedom and thereby closely linked to something to which we often ascribe a particular normative weight (35, 36). So it is certainly not far-fetched to discuss disability, understood as a particular form of inability, as something normatively relevant. At the same time, Gregory's definition does not include normative vocabulary.<sup>10</sup> Rather, it remains a separate question how different ways of "being less able to do something than is typical" are related to individual well-being levels.

If Gregory's inability theory really has all the advantages mentioned above, then it could be successfully used as a basis for discussing the adequacy of our classificatory and social practices, and for raising moral questions that particularly relate to people with disabilities. Unfortunately, there are reasons to doubt that the inability theory, in its present form, actually has all the appealing features mentioned above. In the next two sections, the focus is on classificatory problems for Gregory's account that go beyond those that have already been raised by others, as well as on a more fundamental problem arising from the fact that Gregory accepts both the conservative criterion and the realist criterion.

## 2. THE INABILITY THEORY CAPTURES TOO MUCH AND TOO LITTLE

The inability theory has difficulties in defining a criterion for the relevant inability and bodily characteristics that (a) neither excludes paradigmatic cases of disability nor includes paradigmatic cases of nondisability and (b) gives a clear answer as to how specific cases are to be classified. I use certain cases of visual limitations that occur in a particular context as examples of paradigmatic cases of disability that the inability theory cannot classify as cases of disability, and these cases thus serve as counterexamples to the theory. As paradigmatic

9 Elizabeth Barnes presents the stronger claim that not defining disability as "something that's bad or suboptimal" is a criterion of success for a disability theory rather than merely an attractive feature (*The Minority Body*, 11).

10 In this respect, Gregory's inability theory differs from another recent proposal to understand disability in terms of a limitation of abilities. Jessica Begon narrows down the ability limitations relevant to disability by saying that they involve "restriction in the ability to perform those tasks human beings are entitled to be able to perform as a matter of justice" ("Disability," 936, 937).

examples of nondisability, I present left-handedness, menopause, and pregnancy as cases that the inability theory cannot clearly classify correctly. As we will see, these counterexamples arise because Gregory's account is so far elaborated only in broad outlines and because statistical standards play a central role in it.

Importantly, the aim of this section is not to point to uncontroversial and insurmountable tensions between classificatory judgements based on the inability theory and our actual classification practice. The aim in outlining the classificatory problems for Gregory's account is to emphasize or draw attention to particular features of the inability theory that make it significantly more difficult to arrive at clear, justified, and—in terms of our classification practice—convincing judgements about specific cases. Thus, even if readers are not convinced that all the examples discussed are paradigmatic cases of disability/nondisability and provide clear counterexamples to the inability theory, they can take the following discussion as a way of demonstrating the extent to which certain features of the inability theory pose challenges to this proposal that are not easily met.

From the discussion of certain visual impairments in a specific context and left-handedness, we learn that the inability theory provides us with classification criteria that do not allow clear classifications, at least in certain cases, because the theory does not include a definition of the range of the statistically atypical bodily characteristics relevant to disability.<sup>11</sup> An interesting aspect of these examples is that the classification of the cases based on the inability theory remains indeterminate even when we modify the details of the cases in ways that tend to influence our pretheoretical judgements about these cases. The discussion of left-handedness further illustrates that we can easily come up with statistically atypical ability limitations for statistically atypical bodily characteristics. This type of example suggests that the inability theory may classify many more things as disabilities than we usually assume, and Gregory's Gricean strategy therefore needs to be applied much more often than it might seem in Gregory's discussion of a similar overinclusiveness objection from the literature.<sup>12</sup> The examples of menopause and pregnancy demonstrate the extent to which disability classifications based on the inability theory depend on the definitions of the relevant reference classes and thus on convincing explanations of why certain ways to define those reference classes are more adequate than others.

11 Gregory addresses this concern, but not to the extent necessary to refute it ("Disability as Inability," 29). See note 16 below for further discussion.

12 Kahane and Savulescu, "The Welfarist Account of Disability," 45.

I start with an objection of underinclusiveness. There are conditions that intuitively constitute disabilities, at least in certain contexts, but that the inability theory cannot classify as such because the ability limitation is caused by physical characteristics that are *comparatively typical*. Examples are ametropias such as short- or long-sightedness, astigmatism, and presbyopia. These are widespread but nevertheless seem to constitute disabilities in certain contexts. Presbyopia, for example, is defined “as the gradual and progressive age-related loss of accommodative amplitude and is ultimately due to an age-related loss in the ability of the lens to undergo accommodative optical changes.”<sup>13</sup> For typically sighted individuals, presbyopia is associated with “blurred vision at near, visual fatigue or headache after attempting to read at near for prolonged periods, or an inability to sustain clear vision at a normal reading distance” from an age of forty to forty-five years. Since presbyopia is age related and because of our long lifespan, its symptoms are very common.

At first glance, the inability theory appears to have no difficulty in attributing disability in presbyopia cases. Gregory could say that presbyopia consists of atypical bodily features and is associated with atypical levels of ability (partly because of these bodily features) and that the conditions for the presence of a disability are therefore met. On the inability theory, typicality depends on reference groups that are also determined by one’s stage of development. And a stage of development such as being biologically adult is a very broad category, as Gregory understands it. It includes a thirty-year-old as well as an eighty-year-old (28). Relative to such a large reference group, the bodily condition constituting presbyopia and its later symptoms most likely do not qualify as statistically most frequent and thus as typical in this strong sense.

However, Gregory acknowledges a range of typical bodily characteristics and ability levels. This means that he allows for less typical bodily features and ability levels that are still not atypical in the way constitutive of disability. Recall the example of “a petite woman,” who has slightly less typical bodily characteristics that also diminish her ability levels in some dimensions. To reject this case as a counterexample to the inability theory, Gregory argues, “But whilst petite women might have somewhat atypical bodies and thereby lack some relatively typical abilities, their bodies and ranges of ability are not *that* atypical” (28). The first concern about the inability theory in its current state is now that as long as Gregory does not more clearly outline the range of the typical, it remains unclear why the same that holds for the example of “petite women” should not also apply to presbyopia. Presbyopia and its symptoms are *somewhat* atypical, not *very* atypical, and therefore not atypical to the extent

13 Glasser, “Presbyopia,” 489.



constitutive of disability. Thus, since Gregory allows for a range of the typical, it does not seem controversial to say that his account places presbyopia and its symptoms as within the range of typical bodily characteristics and thus does not classify presbyopia and its symptoms as a disability.

But is this really a problem for the inability theory? Are we indeed facing a paradigmatic case of disability that cannot be adequately classified by the inability theory? What seems to indicate that we are not dealing with a paradigmatic case of disability is that presbyopia appears to be associated with only a slight reduction in typical vision, which can be easily corrected with a visual aid. My concern with the inability theory becomes obvious when we consider that we want to come up with a disability account that can be applied globally and that also considers life circumstances that are very different from those of the typical authors of academic papers. Just think of a person with presbyopia who does not have access to visual aids and earns her living by sewing.<sup>14</sup> According to our everyday judgments about disability, people with presbyopia clearly have a disability, at least under these circumstances, and Gregory cares about our everyday judgments. This case highlights that whether we consider something to be a paradigmatic case of disability seems to depend also on the environment. When we consider an environment where a person has no access to visual aids but relies on very good vision, we are probably more inclined to judge that the person has a disability.

On a general level and in relation to other cases, the inability theory can also address the importance of a particular environment for our classification practice. As Gregory notes, a change in the environment can make it the case that an atypical bodily characteristic no longer results in an atypical level of ability that constitutes a disability (30). However, addressing the importance of a particular environment in this way does not alter the fact that the inability theory cannot classify disability in accordance with our classification practice or provide guidance for our classification practice in cases of presbyopia. Also in the case of someone with presbyopia who has no access to visual aids yet relies on good vision, it is not clear whether the bodily characteristics that constitute presbyopia are within or outside the range of statistically typical bodily characteristics. As I wrote before, as long as Gregory does not more clearly outline the range of the typical, it remains unclear why the same that holds for the example of “petite women” should not also apply to presbyopia: presbyopia and its symptoms are somewhat atypical, not very atypical, and therefore not atypical to the extent constitutive of disability. And thus, even in the specific setting in which we are inclined to classify presbyopia as a paradigmatic case of

14 See Holden et al., “Towards Better Estimates of Uncorrected Presbyopia.”



disability, it is unclear whether the necessary conditions for disability proposed by the inability theory are met. To sum up: since Gregory refers to statistical standards and does not further specify the range of what is statistically typical that is relevant to disability, the inability theory faces difficulties in classifying presbyopia as a disability, even in specific cases in which presbyopia seems to be a paradigmatic case of disability.

Another example indicating the underinclusiveness of the inability theory is a significant reduction of the ability to concentrate due to nutrient deficiencies or thyroid problems. In this type of case too, we are dealing with an ability limitation that is caused by comparatively typical bodily characteristics, and thus one of Gregory's necessary conditions for disability is not clearly met. As with the example of presbyopia, the extent to which we judge such cases to be counterexamples to the inability theory, thus demonstrating its underinclusiveness, depends on the context specific to individual cases. (For example, is it easy to get thyroid medication, and is it well tolerated?) But even if we assume that conditions such as nutritional deficiencies and thyroid problems are not paradigmatic cases of disability, not even in the scenarios where they are not compensated for with medication and supplements, these cases still show us that the inability theory provides us with classification criteria that often do not provide clear answers.

Let us now turn to concerns about overinclusiveness. We can start with generalizing the objection already mentioned above that on the inability theory, the lack of statistically typical but intuitively completely irrelevant abilities such as tongue rolling and ear wiggling also counts as disability. Since Gregory does not specify the inability theory in a way that excludes these cases, we can identify a statistically atypical ability level for virtually any statistically atypical physical characteristic.<sup>15</sup> As a result, when we deal with statistically atypical physical characteristics, we would also be dealing with disabilities. Since Gregory allows for very fine-grained descriptions of abilities and does not presuppose the complete absence of an ability for a disability to be present, there are no limits to our creativity in coming up with counterexamples. Gregory's proposal to explain away our divergent intuitions for such cases with reference to Grice's communication maxim of relevance would therefore have to be applied much more often. In the context of the characteristic of left-handedness, for example, we find many examples of reduced ability levels that might simply be related to the fact that most people are right-handed rather than to the fact that left-handed people are socially neglected or subject to discriminatory attitudes (yet such unjust reductions in ability levels are certainly part of our social reality too).

15 I am very grateful to Andreas Cassee for helping me to see this point.

And some of the reduced ability levels that affect left-handed people because of their handedness may have no relevance to them at all. In these cases, we would probably not assume any paradigmatic disabilities. However, based on the inability theory, the necessary and sufficient conditions for a disability would be met in these cases, which include irrelevant atypical ability levels partly due to left-handedness.

Besides the reference to Grice's communication maxims, Gregory could of course argue with regard to this case that left-handedness and the ability limitations associated with it are not *so* atypical. But as we have seen in the discussion of presbyopia, this strategy has the effect that other intuitive cases of disability and nondisability can no longer be captured by the theory of inability because they are based on physical characteristics that are not *so* atypical either.<sup>16</sup>

A second source for overinclusiveness problems is Gregory's characterization of relevant reference classes, in particular that he distinguishes them according to biological stages of development. As Gregory understands the developmental stage of adulthood, it includes people of very different ages, which are thus classified by the same typicality standards. It follows from this that "an eighty-year-old with inability that are typical for someone their age may nonetheless be disabled if those inability are not typical for human adults in general. In turn, the theory rightly entails that many elderly people are disabled" (29).

Gregory's theory captures something plausible but overshoots the mark. Mobility restrictions such as an insecure gait without aids due to very low muscle tone seem plausible examples of age-related disabilities. However, the situation is different with other physical characteristics such as menopause. Given the wide age range within the group of biological adults, menopause, which is associated with ability limitations, might likely be classified as a disability by the inability theory. But this clearly contradicts our everyday classifications, at least when we think of menopause as occurring after the age of forty.

Finally, there are examples of overinclusiveness that suggest that Gregory's definition of reference classes needs further types of restrictions, in addition to

16 I take it that an ability limitation due to being left-handed is a paradigmatic example of *not* having a disability and that, e.g., difficulties with sewing for a living due to presbyopia is a paradigmatic example of *having* a disability. As long as this is accepted, it is also clear that Gregory cannot in all cases take his theory's indeterminacy as to when something is atypical in the relevant sense as an advantage, as something that adequately captures the phenomenon of disability. See Gregory, "Disability as Inability," 29. And even if one does not accept that left-handedness is a paradigmatic case of nondisability, and presbyopia in a particular setting is a paradigmatic case of disability, these and analogous cases suggest that the inability theory is unable to provide a clear answer in relation to a large set of cases. This result does not fit well with the desideratum to develop a theory of disability that provides us with criteria for categorizing unclear cases. See Gregory, "Disability as Inability," 24, 27.

species, sex, and stage of development. Take the example of pregnancy. Pregnant women are confronted with a number of atypical bodily characteristics that lead to limitations in their ability levels, and yet we do not usually classify their condition as a disability. They gain a lot of weight in a short time, which leads to mobility restrictions. They are quicker to be out of breath, which influences their ability to pursue sports activities in the usual way. They have greater need for certain nutrients and face hormonal changes that can affect their energy balance. But if they are subject to the same standards as nonpregnant women, the inability theory may classify them as having a disability.<sup>17</sup> Another candidate for further restriction of reference classes is skin color. There is evidence that people with darker skin color who live in Europe have problems with vitamin D balance, while some people with lighter skin color living near the equator have problems with folic acid balance.<sup>18</sup> However, attributing disability to individuals who have nutritional problems due to a combination of their skin color and geographical location seems to run counter to our practice of classifying disability.

A natural way to address these problems of overinclusiveness is to further restrict the relevant reference classes. However, there are in principle many different ways to determine the relevant reference class, and the question arises why certain characterizations are more adequate than others.<sup>19</sup> This points us to a more fundamental challenge for the inability theory, stemming from the fact that Gregory accepts both the conservative criterion and the realist criterion, which is the topic of the next section.

### 3. MEETING BOTH THE CONSERVATIVE AND THE REALIST CRITERIA

The inability theory requires reference to specific reference classes. Distinguishing between reference classes captures that what is typical for one group is not typical for another group. If the relevant disabilities were not determined relative to what Gregory terms “typical for a human being of your sex at your

- 17 I make the weaker claim that the inability theory *may* imply that pregnancy is a disability because—as I have discussed before—the inability theory is underdetermined as to when something is atypical in a disability relevant way. Because of this ambiguity, only limited claims can be made about what the inability theory implies for particular cases.
- 18 Harris, “Vitamin D and African Americans”; and Jones et al., “The Vitamin D-Folate Hypothesis as an Evolutionary Model for Skin Pigmentation.”
- 19 For a presentation of this line of criticism against Boorse’s biostatistical theory of health, see Kingma, “What Is It to Be Healthy?” and “Naturalist Accounts of Mental Disorder.” Meanwhile, Wasserman and Aas have also drawn on Kingma’s objection to Boorse’s theory of health when discussing ability theories of disability, particularly Jessica Begon’s proposal (“Disability”).

stage of development,” the inability theory would go against our intuitions that “humans are not disabled in virtue of lacking the ability to fly, men are not disabled in virtue of lacking the ability to breastfeed, and infants are not disabled in virtue of lacking the ability to talk” (28).

Further, to be tolerably close to our everyday concept of disability, the inability theory needs to include certain reference classes instead of others.<sup>20</sup> As we have seen in the previous section, it should probably distinguish between, for example, not only sexes but also pregnant and nonpregnant women. At the same time, the account should not allow different reference classes for wheelchair users and people who do not need a wheelchair. In this case, the condition of a person who needs a wheelchair would not be classified as a disability, because needing a wheelchair is not atypical compared to a reference class in which everyone needs a wheelchair. Hence it is not difficult to observe that regarding the objective to give an account that accommodates our everyday disability classifications, there are adequate and inadequate reference classes. The worry now is that the inability theory does not provide an account of what makes a reference class adequate and therefore cannot give us a satisfactory answer to what disability is.

Gregory does not explicitly justify his selection of reference classes. There are scant references to the underlying motivations for such choices. With reference to the key term ‘typical’, he writes, “‘Typical’ here means ‘typical for a human being of your sex at your stage of development.’... (In principle, we might relativize further, such as to race. But it is hard to find *intuitive cases* that support further restrictions like this)” (28, emphasis added). The additional comment in parentheses suggests that Gregory takes everyday judgments about paradigmatic cases of disability or nondisability as a guideline for his choice of adequate reference classes. The reasoning seems to be that since we commonly would not judge that men are disabled in virtue of lacking the ability to breastfeed, distinguishing between reference classes according to sex is adequate. Evidently, this is the most obvious way to satisfy the conservative criterion. And to rely on everyday judgments about cases of disability does not seem to be, in principle, inconsistent with the second adequacy criterion to provide an account that picks out something real. Philosophers often look at everyday judgments about instances of *X* precisely because they hope to arrive at new ideas about what *X* actually is. The idea is that we may already be on the right track with our everyday judgments, that they capture something real, and that we can thus learn something from studying them. Moreover, Gregory refers only to everyday classifications

20 Here I am mirroring Kingma’s line of criticism against Boorse’s theory of health (Kingma, “What Is It to Be Healthy?” 128, 129).

of paradigmatic cases of disability and nondisability, and it is a widely accepted strategy to consider everyday classifications as part of a reflective equilibrium approach in the justification of an account. And yet the sole reference to our everyday classifications in the justification of the relevant reference classes raises questions when it comes to an account of disability.

The conservative and the realist criteria are in tension with each other because the latter, as a standard of correctness, provides a corrective to our everyday classifications when these are flawed. I argue that in the case of disability, an account's potential to provide a standard of correctness for our existing classifications is significantly weakened if key components of this account are designed only to map our existing classification practices.

In the case of disability, there seems to be a particular danger that our existing classifications do not carve nature at the joints, which makes the classifications inadequate to solely guide our theorizing about disability and makes a standard of correctness for our disability classifications all the more important. This danger relates to facts about the history and practice of classifying disability. First, it has been suggested that our existing classifications of disability are the result of complex interactive processes between many interest parties against the background of major historical events and changing political, legal, economic, and social circumstances.<sup>21</sup> The term 'disability' entered official, technical, and everyday language, and its meaning changed because it served the interests of varying groups.<sup>22</sup> Our everyday classifications thus seem not only variable but also opportunistically shaped. Second, our classifications have enormous social consequences. There is a lot at stake if disability is incorrectly classified. Such misclassification can be decisive for whether a person has access to important resources, what standing they enjoy in their social environment, whether their needs are adequately considered, and what others owe them. This social and normative dimension of disability classifications can also invite misclassification under certain circumstances. This possibility must be considered when a disability account is based on existing classifications. Third, disability classifications often affect individuals who do not themselves shape these classification conventions. These people do not have the capacities or the necessary external resources to actively participate in the practice of classification in the light of their experiences. Finally, there is much to suggest that our existing classifications of disability are also shaped by stereotypes. These include the idea that an individual with a disability can only achieve something

21 Linton, *Claiming Disability*; Silvers, "On the Possibility and Desirability of Constructing a Neutral Conception of Disability"; and Burch and Sutherland, "Who's Not Yet Here?"

22 Francis and Silvers, "Perspectives on the Meaning of 'Disability.'"

if she “overcomes” her disability or that a disability typically manifests itself in someone needing a wheelchair to get around.<sup>23</sup>

The more fundamental problem with the inability theory, then, is that a central component—the definition of the relevant reference classes—is based exclusively on conservative considerations. This means that a particularly error-prone classification practice is built into a theory that is supposed to capture what disability really is and could thus serve as a standard of correctness.

The inability theory has a second central component that is motivated by considerations of compliance with our everyday classifications. Again, the question arises as to whether the inability theory can fulfill the realist criterion in view of this type of motivation, considering how error prone our classification practice seems to be in the case of disability.

This second central component is condition 2 of Gregory’s definition of disability. Let us recall the final version of the inability theory:

To be disabled is to be less able to do something than is typical, where this degree of inability (1) is partly explained by features of your body that are atypical and (2) is not explained by anyone’s attitudes toward those bodily features. (33)

According to Gregory, the second condition excludes only cases in which an individual’s reduced level of ability results from the problematic attitudes of others towards that individual’s atypical bodily characteristics. Not excluded are cases of reduced ability levels that result from living with atypical bodily characteristics in a social environment shaped by an unjust lack of attention to the situation of people with these bodily characteristics (33). Gregory presents the following scenario as an example of the first type of case, which makes condition 2 necessary in order to avoid counterexamples to the inability theory:

Imagine that you are a member of a small minority race and are a victim of direct discrimination on the basis of your race. This racism might reduce the options you have. To that extent, you might be unable to do certain things, where this inability is partly explained by the atypical features of your body. So it seems as though our theory classifies you as disabled. But plausibly, under these circumstances, you are not necessarily disabled. (32)

23 For example, we often seem to take it for granted that a disability is visible and manifests itself in the use of mobility aids. Evidence of this is provided by the reports of people with so-called invisible disabilities, who often have to make special efforts to convince others of having a disability. See Stone, “Reactions to Invisible Disability.”

Gregory wants the inability theory to conclude that people who face ability limitations due to direct discrimination based on, for example, their atypical skin color do not have a disability. The aim of avoiding such counterexamples, and thus following our classification practice, motivates condition 2.

My concern with condition 2 arises from the fact that for including 2, unlike 1, Gregory seems to rely only on reasons that are based on conservative considerations. Furthermore, unlike in the case of condition 1, it is unclear what a more comprehensive motivation for condition 2 might look like. What reasons other than conservative ones are there for accepting condition 2? Rather, there seem to be reasons against adopting condition 2 as part of a disability account.

A number of considerations speak in favor of making individual physical and mental characteristics, as referred to in condition 1, a central element of a disability account. What is crucial for the argument here is that these considerations do not exclusively concern our everyday classifications of disability. If one is interested in the question of what disability is, not just in finding a pragmatic answer that serves, for example, certain political, social, or administrative purposes, then it seems plausible to advocate an account according to which disability is not exclusively related to how one is treated or how one self-identifies but also has something to do with one's physical and mental characteristics.<sup>24</sup> Here are some reasons, which are not exclusively based on conservative considerations, for the inclusion of this individual component. First, various disability accounts already explain disability by reference to individual physical and mental characteristics.<sup>25</sup> Second, when we look at paradigmatic cases of disability, the specification of individual physical or mental characteristics typically plays an important role in the description of the respective situation. Third, many people with disabilities also emphasize the individual, physical, or mental side of disability, which does not mean that they see this side as something inevitably bad.<sup>26</sup> Fourth, there may be pragmatic reasons for explaining disability only in terms of, for example, certain attitudes in society, but from a scientific point of view, there are a whole range of different factors, including individual physical and mental characteristics, that interact with each other and affect an individual's ability level. All of these need to be taken into account in a disability account that is not subjective or value laden.<sup>27</sup>

24 Barnes, *The Minority Body*, 36–38.

25 Radical versions of the social model are an exception (e.g., Oliver, *Understanding Disability*). However, it is unclear whether these versions would even subscribe to the realist criterion and not just see themselves as tools to implement certain social and political objectives.

26 For an exemplary statement of this kind, see Clare, "Stolen Bodies, Reclaimed Bodies," 359.

27 Wasserman, "Philosophical Issues in the Definition and Social Response to Disability," 225–29.



To see the challenge for the inability theory, it is now crucial that we do not have such a variety of reasons in favor of condition 2. Furthermore, we have reasons that are not based on our everyday disability classifications against adopting condition 2. Statements by people with disabilities about their situations with disability often refer to the interaction of individual factors with environmental factors and, in particular, with the attitudes of other people.<sup>28</sup> There is evidence that the attitudes of fellow human beings to certain individual physical and mental characteristics have a significant influence on the situation of people with these characteristics, their opportunities, and perceived well-being:

People with disabilities are believed to be incapable, useless, pitiful or even laughable. Stigma shapes the affect, attitudes and behaviour of others that mar the daily lives of people with disabilities: the profound condescension implied in being labelled an inspiration for performing ordinary tasks; being robbed of decision-making authority over matters of intimate personal concern; being mocked and ridiculed by colleagues, neighbours and strangers.<sup>29</sup>

Since the degrading attitudes of others are so central to the experience of disability, the question becomes even more pressing as to how condition 2 is justified, which explicitly excludes inability due to attitudes in response to atypical bodily characteristics from the account. Gregory does not have to deny that these attitudes have a significant influence on the situation of people with disabilities; he must deny only that the attitudes are relevant to the question of whether or not a person has a disability. However, on the basis of the above considerations, it seems justified to expect Gregory to make an argument for condition 2 that is not exclusively based on facts about our classificatory practice: first, because of the role that attitudinal barriers play in the lives of many people with disabilities; second, because individual factors (as specified in condition 1) typically affect ability levels not in isolation but rather in complex interaction with a wide range of environmental and social factors.<sup>30</sup> Focusing on only certain types of factors in this complex interactive relationship requires a justification that also considers the dangers of our existing disability classification practices. Thirdly, a more comprehensive justification for condition 2 is required because we have reason to believe that our disability classifications

28 See, e.g., Young, "I'm Not Your Inspiration"; and Stock-Landis, "The Toxic Myths I Internalized as a Person with Facial Differences."

29 Barclay, *Disability with Dignity*, 129.

30 Wasserman, "Philosophical Issues in the Definition and Social Response to Disability," 225–29.

are particularly prone to error, and the stakes for those who might be affected by error are high.

The strong focus on conservative considerations is also evident in the way Gregory responds to a possible objection to condition 2. The objection is that the inability theory is too individualistic an approach to disability because it excludes a central group of attitudes towards individual bodily characteristics as disability-constituting features. To counter this objection, Gregory introduces the aforementioned distinction between disabilities resulting from certain problematic attitudes in response to an individual's atypical bodily characteristics and disabilities resulting from a social environment that is shaped by an unjust lack of attention to people with these bodily characteristics. Gregory argues that the inability theory is not overly individualistic because it does not exclude disabilities that result from an unjust lack of attention. The argument is that the inability theory does consider social injustice, even if only of a certain kind. This clarification, however, does not undermine my previous concern about the fact that Gregory's justification for the inability theory does not consider injustice of the other kind: No reasons are presented that are independent of conservative considerations for excluding disabilities that result from the attitudes of others towards a person's atypical bodily features. Such a more comprehensive justification of condition 2 is also important because there are *pro tanto* reasons to consider the importance of others' attitudes to the experience of disability in a disability account. Against this background, it seems justified to conclude that from the perspective of someone who also accepts the realist criterion, condition 2—in addition to Gregory's definition of the relevant reference classes—is insufficiently justified.

#### 4. CONCLUSION

The challenges for the inability theory arise from generally plausible expectations for a disability account that are difficult to meet all together. Therefore, the following outline of problems also applies to others who have attempted to formulate a disability account, with the difference that many of them face additional challenges. To develop his proposal into a comprehensive account of disability, Gregory would have to preserve the already mentioned advantages of his proposal while addressing the problems identified above. The modified account should retain the simplicity and intuitive character of the current proposal. It should also make clear why disability is normatively relevant, without defining disability as something bad.

In order to address the shortcomings of the inability theory, we first need more detailed definitions. We need a more precise definition of the range of

typical bodily characteristics and ability levels. We also need a more detailed characterization of the relevant reference classes. Second, as we have seen, the inability theory faces counterexamples that suggest that the theory is overinclusive. One type of such counterexamples concerns intuitively insignificant ability limitations, such as wiggling one's ears. With a little creativity, we can identify associated atypical ability levels for many atypical bodily features. This type of case suggests that statistically atypical bodily features that lead to statistically atypical ability levels are not a sufficient criterion for disability. The suspicion arises that a statistically atypical ability level associated with a statistically atypical bodily feature may be an important indicator of the presence of disability but does not in itself explain what individual cases of disability have in common. Thus, we might conclude that the inability theory has not yet captured the element that could underpin the theory's explanatory power. Third, we need an account of what makes a reference class adequate, without sacrificing the aforementioned advantages of the inability theory. Fourth, either we have to abandon condition 2 and ensure that the theory satisfies the conservative criterion in some other way that is not subject to the same problems, or we have to justify condition 2 on the basis of nonconservative considerations as well. Attempts to meet all these challenges for the inability theory may show us that adopting it is so costly and problematic that this motivates us to look for an alternative account.<sup>31</sup>

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