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ABSTRACT

This article discusses ongoing lawsuits against Disney Parks and Resorts U.S., brought by people with autism and their families. These lawsuits illuminate an ethical dilemma about the appropriate scope of disability equality. This article suggests that Disney and the courts have adopted a standard of simple equality where all theme park patrons are treated the same way, regardless of ability. I argue, however, that the standard of equality that should be used moving forward is equal access to advantage – specifically, equal access to opportunities that enable people with disabilities to have an enjoyable theme park experience.

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My summers usually involve trips to Disneyland in Anaheim, California. This summer, however, I stayed home. It is too challenging for me as a motorized wheelchair user to access the theme park. During my last visit, in February 2017, there was only one wheelchair charging station in the entire resort—located near the wheelchair and ECV rental area outside the park's main entrance. According to a Disney Parks blog, this was still the only designated charging area in the Disneyland Resort as of May 2017.¹

As someone from Miami, Florida, not far from Walt Disney World in Orlando, I am an avid Disney fan. When I go to a Disney theme park, I like to arrive when the park opens and stay until closing. In Orlando, I can do this with my motorized wheelchair because many of the restaurants have power outlets where I can charge my wheelchair. This is not the case in Anaheim.

To spend a full day at Disneyland, I have to choose between leaving my wheelchair to be charged at the ECV rental area and getting a temporary wheelchair, or bringing a manual chair and being pushed. Both options are problematic. I view my motorized chair as an extension of my legs. Either option makes me feel as though I am not fully in control of my body, since my motorized chair is customized to ensure my independence. I experience a subtle but important form of inequality in this situation. Not being able to

charge my chair as others might “recharge” their legs by sitting at one of the many benches throughout the park, creates, in my view, an inequality in my opportunity to enjoy a Disney theme park as I would if I could walk. This is disappointing to me because Walt Disney World was the site of my most cherished childhood memories (McGrory 2008).

I am not alone in experiencing accessibility dilemmas at Disney’s U.S. theme parks. In ongoing lawsuits, people with autism and their families are suing Disney under the Americans with Disabilities Act (ADA) and the Unruh Civil Rights Act, prohibiting disability discrimination in the State of California, over how Disney resorts allegedly fail to accommodate their disabilities. Until recently, *A.L. v. Disney* was the first of 30 cases on appeal in the 11th Circuit Court of Appeals. On August 17th 2018, that court remanded *A.L. v. Disney* and the 29 related cases back to the lower court for further consideration.² Another case, *T.P. et al v. Disney*,³ involves California families of individuals with autism challenging Disneyland’s accommodation procedures. There are currently 12 families awaiting individual decisions in this case.

The plaintiffs take issue with Disney’s Disability Access Service (DAS),⁴ the main method of accommodation at its U.S. theme parks. The DAS requires people with disabilities, including autism, to wait the same amount of time as other guests, minus 10 min, but grants a virtual place in the queue so they can wait elsewhere. In Anaheim, there are several kiosks for DAS users to receive return times throughout the park. In Orlando, return times are assigned at individual attractions. In either resort, a return time is electronically linked to their ticket. At the return time, an employee at the particular attraction scans the person’s ticket. While some rides allow for immediate access at the return time, many rides require that the DAS user wait in a separate DAS queue upon arrival at their scheduled time. The DAS does not preclude a disabled person from waiting in a standard queue for another attraction while they wait, or from using Disney’s Fastpass service, but they cannot simultaneously hold multiple DAS return times.

The plaintiffs allege that their disabilities require modification with regard to how long they are required to wait for an attraction, not where they wait. They claim that if forced to wait for an extended period of time, they experience meltdowns, which involve socially inappropriate or even violent behaviors towards themselves or others. From the plaintiffs’ perspectives, these meltdowns limit their ability to enjoy the Disney theme parks on an equal basis with other non-disabled guests.

The DAS replaced the Guest Assistance Card (GAC) service,⁵ which enabled disabled people to have unlimited access to attractions via the Fastpass line or alternative entrances, significantly shortening but not eliminating their wait time. Disney publicly states that replacement of the GAC was a result of widespread abuse.⁶ Non-disabled guests were paying

wheelchair users to accompany them, shortening their wait time.⁷ Thus far, the courts have agreed that Disney did not violate the ADA by switching from the GAC to the DAS. Disney also maintains its commitment to providing an inclusive and accessible environment in public statements. In September 2016, Disney gave this statement to the Orlando Sentinel: “Disney Parks have an unwavering commitment to providing an inclusive and accessible environment for all our guests, and we fully comply with all ADA requirements.”⁸

I draw on ethical, rather than legal, arguments to consider the following question: By what metric of equality should equal access be measured in these cases? In political theory, simple equality is a term describing procedures that treat all individuals in the same way (Walzer 1983). Although not explicitly stated in Judge Anne Conway’s initial decision in *A.L.*,⁹ her reasoning implies that going to theme parks like Disney is a privilege with the obligation to wait the same amount of time as anyone else. Conway asserts that in the context of Disney’s theme parks, the purpose of the ADA is to ensure that guests with autism (or other disabilities) have an experience comparable to that of non-disabled guests. Because non-disabled guests have to wait extended periods of time to enjoy an attraction, the ADA on Conway’s reasoning only requires that Disney provide accommodations which enable guests with disabilities to wait the same amount of time as non-disabled guests. This exemplifies a legal application of simple equality in that it interprets the ADA as requiring all people with disabilities be treated similarly to non-disabled guests.

While the DAS is justified in terms of simple equality, there are cases where the DAS violates this ideal.¹⁰ Disney has explicitly stated in its guidelines for DAS users that guests with disabilities may have to wait beyond their return time.¹¹ As an example, one parent of a man with autism, interviewed for this article, indicated that for the Disneyland attraction Space Mountain, her son consistently has to wait an additional 20 minutes in a queue with wheelchair users waiting to board the ride.¹² He has experienced meltdowns because of this. Because Space Mountain was built in 1977,¹³ I understand the purpose of a separate queue in order to promote physical accessibility. I also acknowledge that it might take someone with a disability more time to board the ride, especially if, like me, they have a mobility impairment. However, from my perspective, if the DAS sometimes requires users to wait longer for an attraction like Space Mountain, simple equality is an inaccurate ethical standard of justification.

Even if the DAS always promoted simple equality, I question whether this is the appropriate metric of equality to use in these cases. In other contexts, time is often modified to provide people with disabilities equal access. For instance, as a student, I have often received extended time to complete in-class examinations. Without this accommodation, I would be unable to demonstrate my abilities on an equal basis with others.

The process of time modification is sometimes complicated when determining how much extended time is needed to provide people with disabilities equality of access to educational assessment. Furthermore, this example is not identical to shortening wait times in amusement park queues for people with autism. Nonetheless, time modification is an appropriate accommodation in many instances. In situations where time modification is an accommodation, the kind of equality at play is not simple equality, but fair equality of opportunity. Fair equality of opportunity refers to a set of philosophical arguments which hold that social institutions are not merely required to treat all people in the same way, but also minimize the degree to which social disadvantage limits access to a particular good or outcome (Rawls 1999). In the context of disability, this often means providing accommodations that make it possible for people with disabilities to, for example, demonstrate their intellectual abilities on an equal basis with others.

In my view, the appropriate metric of equality to use in these cases is equality of access to advantage, most strongly advocated by Cohen (1989). Although not originally intended to conceptualize a corporation's obligations to customers with disabilities, this account of equality holds that those who are socially disadvantaged should be given an equal opportunity to receive the benefit of a desired good or service. What would matter on this view is not whether guests with and without disabilities wait the same amount of time for an attraction, but whether guests with and without disabilities have equal opportunities for enjoyable experiences at a Disney theme park.

On a narrow interpretation of equal access to advantage, equality of wait time might suffice in that all guests are given the same opportunity to enjoy an attraction. The application of the view I have in mind, by contrast, is one that addresses how structural barriers in a Disney theme park could make it harder for people with disabilities to enjoy themselves. Whereas people who can walk have more than one place in the resort where they can sit and recharge their legs, there is only one place where I can recharge my 'legs'. Similarly, if a person with autism has a meltdown due to an extended wait time, their opportunity to enjoy Disney is also diminished. Although many people may become annoyed by having to wait for an attraction, few neurotypical people would get to the point of hurting themselves or others in frustration. Future discussions should consider how corporations, like Disney, can promote equally enjoyable experiences for customers with disabilities in ways that are sensitive to efficiency and cost.

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