Against Impairment: Replies to Aas, Howard, and Francis

Sean Aas, Dana Howard, and Leslie Pickering Francis raise interesting and compelling challenges to the characterization of disability I present in *The Minority Body*. I'm deeply grateful to them for the careful attention they've paid to my work, and for the compliment of such thoughtful objections. In what follows, I defend my view from their criticisms, but before doing that I should make an important caveat. I think it's no accident that they're all focusing on the same section of the book - my definition of disability. This was a section of the book I struggled with, and I ended up where I did more by process of elimination (I kept trying out other options and finding too many problems with them) than anything else. I remain less than fully satisfied with the model I developed, and so I'm very glad to see it getting critical attention. Hopefully our collective efforts can make more progress than I was able to make on my own.

That being said, both Francis' paper and Aas and Howard's paper focus on my rejection of the disability/impairment distinction. And I remain fairly staunch in my preference for avoiding this distinction if possible. The distinction between disability and impairment has been tremendously influential in discussions of disability, and is typically used as a way of separating the basic physical, biomedical, neurochemical, or neurocognitive condition (the impairment) from the socially-mediated disadvantage that such an impairment creates (the disability). In this way, the distinction functions similarly to - and was modeled on - the sex/gender distinction. But, as I'll discuss below, I think that as a way of characterizing what disability 'really is', this is ultimately a mistake.

1. Reply to Francis

Leslie Pickering Francis offers a compelling challenge to my account of disability - and my rejection of the disability/impairment distinction - based on the role that social solidarity plays in my account. I argue for a solidarity-based view of disability: the social category of disability emerges from a specific kind of collective solidarity, and disability is interesting as a social category precisely because it has proved useful in marking out this axis of social solidarity. But, as Francis rightly points out, the way that disabled people have *in fact* pushed for their civil rights often incorporates a disability/impairment distinction. For example, the category of impairment is an integral part of determining who is covered by the ADA. And this isn't a mere stylistic or terminological preference. The category of impairment allows us to adequately specify the scope of laws like the ADA so that they don't wildly overgeneralize, and it allows us to do this without conceptualizing disability in normative terms (e.g., those covered by the ADA are those who are more 'severely' disabled or whose physical conditions are particularly bad or disadvantageous). The category of impairment is thus, Francis argues, central to the way in which disabled people have in fact argued for and secured rights for themselves. By my own lights, therefore, it's a mistake to leave out the category of impairment.

I don't deny that the category of impairment is practically useful in precisely the way that Francis suggests - in fact, I think Francis is exactly right about this. What I deny - and this

perhaps reflects simply a difference in our approaches to social metaphysics - is that this gives us a strong reason to include the disability/impairment distinction in our metaphysics. I think that a distinction can be *conceptually* interesting and important without being *ontologically* interesting and important.

As I approach it, when we're doing social metaphysics we're trying to characterize the underlying social reality that explains, unifies, or otherwise illuminates familiar social categories like 'race', 'gender', 'sexuality', etc.[1] Consider, for example, the varying philosophical approaches to the question: 'what explains or unifies our racial categories?' Some same genetics[2], some say shared cultural identity[3], some say shared oppression[4], some say nothing at all.[5] The metaphysical stories provided by these explanations are strikingly different. But they don't, by themselves, give us a direct route to views about how anti-racism legislation should be written, what racial categories should be included in the census, etc. In fact, defenders of all the views mentioned could agree about the best language to use in anti-racism legislation. On at least one interpretation - the one I favor - the question of what language we use in writing our laws is primarily a pragmatic question, and people with very different metaphysical approaches to race can and do share the same anti-racist goals, and thus could easily agree on the best pragmatic approach to take in crafting legislation.[6]

On my view, it's very important to distinguish between metaphysical questions and pragmatic questions. Social metaphysics, as I understand it, is an investigation into social reality - we're trying to figure out truths about our social categories and structures. But political or pragmatic utility isn't a particularly good guide to truth. Plenty of things which are outright false have been, at times, very politically and pragmatically useful things to say. So as I understand social metaphysics, a concept's being politically or pragmatically useful isn't a particularly good reason to think that that concept needs to be a part of the metaphysical theory we give.

Consider, by way of analogy, debates over the nature of sexual orientation. Suppose you held a view of sexual orientation according to which orientation is a spectrum that

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[1] See my (2016): 'Realism and Social Structure'. *Philosophical Studies* Volume 174, Issue 10, pp 2417–2433 for elaboration. See also, most especially, Sally Haslanger (2012): *Resisting Reality*. Oxford: OUP.

[2] See, for example, Quayshawn Spencer (2014): 'A Radical Solution to the Race Problem.' *Philosophy of Science* 81 (5):1025-1038.

[3] As in, e.g., Chike Jeffers (2013). 'The Cultural Theory of Race: Yet Another Look at Du Bois's "The Conservation of Races"'. *Ethics* 123 (3):403-426.

[4] See, for example, Tommie Shelby (2002). 'Foundations of Black solidarity: Collective identity or common oppression?' *Ethics* 112 (2):231-266.

[5] See especially Naomi Zack (1994): *Race and Mixed Race*. Philadelphia: Temple University Press.

[6] It's no part of the *metaphysical* commitments of racial error theory, for example, that racial categories like 'black' shouldn't be invoked in our current census, public health surveys, and so on.

incorporates sexual attraction, romantic attraction, sexual behavior, relationship styles, and so on. And suppose you thought, moreover, that there's no clear divide between 'queer' and 'straight' on this spectrum - talking about 'queer' orientations is primarily a way of singling out the combinations of sexual attraction, romantic attraction, sexual behavior, relationship style and so on which have been subject to a distinctive type of social stigma and disadvantage. On a view like this, you wouldn't think that the metaphysics of sexuality includes discrete categories like 'gay' and 'bisexual'. Yet it's not obvious that this gives you any reason to object to the explicit use of such categories in laws like the Employment Non-discrimination Act. These categories are familiar, explicable in fairly straightforward terms, and allow us to specify a class of people in particular need of legal protection (in a way that a longwinded discussion about the spectrum of human sexuality does not). On my view, the pragmatic uses of categories like 'gay' and 'bi' in the construction of laws, workplace policies, ethics codes, etc doesn't by itself give us reason to think that those categories are part of the underlying social reality of sexual orientation. They may just be a convenient shorthand that's useful for managing practical realities

This brings us to the disability/impairment distinction. Again, I don't dispute that the concept of impairment (and the disability/impairment distinction) is pragmatically useful for determining who should be covered by laws like the ADA. As Pickering notes, impairment lets us specify who the ADA covers in ways that go beyond practical or financial disadvantage. And it does this by giving us a way of singling out which particular *types* of conditions - among the many subject to stigma, social disadvantage, discrimination, etc - are being targeted under the protections of laws like the ADA. A woman who works in a very sexist or image-conscious industry and feels she is being discriminated against based on perceived attractiveness, for example, can sue her employer, but she cannot sue under the ADA. Likewise, someone being forced out of a job due to apparent age discrimination isn't protected by the ADA. Appearance and age are both physical conditions, but they aren't impairments[7], and thus discrimination based on age or appearance doesn't fall under the remit of the ADA.

And Pickering is of course correct that without these specifications the ADA would be so broad as to be useless. In order to be an effective tool for targeting anti-disability discrimination, we need to find a way to specify distinctively disability-related discrimination, and the concept of impairment has been a crucial part of doing that. Where Pickering and I disagree, however, is the question of whether this gives us reason to think that impairment - and the disability/impairment distinction - needs to be built into the underlying account of social metaphysics.

As I argue in my book, I'm generally skeptical that we have philosophically robust, extensionally adequate understanding of impairment such that impairment can serve as a

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[7] Interestingly though, the ADA's regulations specify that 'cosmetic *disfigurement*' [my emphasis] can count as an impairment.

theoretical groundwork for our understanding of disability.[8] It's of course true that the ADA, and similar pieces of legislation, define disability in terms of impairment, but impairment itself is not defined.[9]

Perhaps even more significantly, specific problem cases are explicitly ruled in or out as impairments by stipulation. For example, the ADA's regulations stipulate that addictions and chemical dependencies are not covered, but 'cosmetic disfigurement' is. In this manner, we aren't given a theory or definition or explanation of impairments. Rather, the idea of impairments is assumed, and hard cases are either decided by stipulation or left at the discretion of the courts. Impairment, as deployed in laws like the ADA, thus doesn't really give us an explanation of the difference between impairments and other conditions, or an explanation of what makes a condition an impairment. Instead, it relies on a rough-and-ready, pre-theoretic understanding of what the impairments are: and this seems to be, more or less, just 'the sort of conditions that give rise to disabilities'.

This is, of course, fine for practical purposes, since what we need in these contexts is simply a way for the law to tell us who should be covered, not why they should be covered or in what way the group of people covered form an interesting or unified kind. When doing social metaphysics, though, we (or at least I) have different purposes. We are looking for an explanation of why disability is an interesting or unified social kind. We are looking for an account of the particular features or properties *in virtue of which* an individual counts as disabled. And I'm skeptical that impairment is a useful or necessary part of that explanation. (More on this in the next section.)

Francis, though, introduces a specific argument for why, by my own lights, my account of the social metaphysics of disability needs to include impairment, and the disability/impairment distinction. I argue that what unifies individual disabilities into a coherent social kind is a specific type of collective solidarity. Given that the concept of impairment has been instrumental in how disabled people have in fact implemented that collective solidarity and ensured their own legal protection, my account needs to incorporate impairment to succeed by its own terms.

I have two main things to say in response to this line of argument. The first is that my account doesn't require that whatever the (no doubt varied and multiple) bases for solidarity judgements within the disability rights movement are should themselves be a part of the metaphysics of disability. Here's the basic definition of disability that I give:

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[8] See my The Minority Body, Oxford: OUP, p. 13-38

[9] The ADA's regulations specify that impairment should be understood as including: 'any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin and endocrine. They also cover any mental or psychological disorder, such as intellectual disability (formerly termed mental retardation), organic brain syndrome, emotional or mental illness, and specific learning disabilities.' [Section 1630.2(h)] So impairment is defined by ostension, with 'disorder or condition' left open to interpretation.

A person, S, is physically disabled in a context C, iff:
(i)   S is in some bodily state x
(ii) The rules for making judgments about solidarity employed by the disability rights movement classify x in context C as among the physical conditions that they are seeking to promote justice for.[10]

As I'm thinking about this, lots of things - perceptions of shared disadvantage and stigma, judgements about bodily deviations from the norm, especially those which are widely considered 'defective', etc - will form part of the the basis for the kinds of solidarity judgements in question. But it doesn't follow that everything that forms the basis of such judgements should thereby be written into the definition of what disability is. As I am thinking about it, disability is philosophically interesting as a kind - and individual disabilities form an interesting, unified group - insofar as and because grouping people together in this way allows us to identify and promote a specific type of social solidarity. But I'm not committed, as a result, to thinking that every basis for such solidarity judgements is itself a part of the definition of disability. Indeed, I constructed my account the way I did precisely to avoid this - it's the rule-based judgements of solidarity that matter, not what those rule-based judgements are tracking or attempting to track.

That being said, I'm somewhat skeptical that impairment really does form part of the basis for the collective solidarity judgements in question. Here I think we need to distinguish between what such judgements are based on and how such judgements are implemented for practical social progress - since I think the latter can easily diverge from the former. Impairment is doubtless a way in which we have usefully specified who counts as disabled in laws like the ADA and the Equality Act. But as I discuss above, in these cases 'impairment' often functions as a shorthand proxy for 'the types of conditions we think *ought* to be correlated to disability'. It gives us a way of ruling out disadvantage arising from conditions we think as importantly different from disabilities, but no explanation of that difference. I'm thus skeptical that 'x is an impairment' forms a basic part of the judgements which guide us to think that someone with x is disabled. Rather, my suspicion is that 'x is an impairment' and 'someone with x is disabled' are more or less the same or highly similar judgements, and they are tracking the same kinds of things.

My own contention for what they are tracking is a cluster of related properties, some of them natural/biological and some of them social, that give rise to the unique social situation of disabled people. For the case of physical disability these might include, but aren't limited to - being subject to social stigma based on the idea that a body like yours is 'defective' or 'broken' in some way, having a physical condition that represents a departure from normal function in something like Boorse's sense, having a physical condition that requires you to plan and execute daily activities differently than most people and/or navigate spaces differently than most people, having a physical condition that is aided by the use of assistive devices or technology that are considered atypical, having a physical condition that requires ongoing medical care and causes chronic pain or fatigue, and so on. As I'm thinking about it, none of these factors are individually necessary for something to

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[10] *The Minority Body*, p. 46

count as a disability, but having enough of them, either in number or degree, is sufficient (and perhaps necessary) for someone to be such that they ought to count as disabled.

But at this point, if I'm being honest, I should flag a worry. According to my account of disability, it's solidarity judgements about these type of factors that determine whether something is a disability, rather than the factors themselves. That is, it's the cluster-concept *reasoning* that matters, not the cluster concept itself. But I think there's reason to be concerned that, in saying this, my own view places too much emphasis on what is pragmatically useful (rather than what is unifying or explanatory) in exactly the way that I have been pushing back against in responding to Francis' defense of impairment.

I'm not in general a fan of cluster concept explanations - I think they often aren't very explanatory and they sometimes feel a bit like cheating. My worry was that the cluster concept itself - since the individual aspects of the cluster are themselves very different and a bit of a grab-bag - doesn't actually explain what unifies disability as a kind. Instead of explaining things, it just lists a bunch of factors we associate with disability and says 'yes, you must have some (we're not telling how many) of these things to be disabled.' That sort of explanation felt unsatisfying to me. And that's why I wanted to put the focus more on why an admittedly gerrymandered cluster concept like the one in question is socially important, since it seemed to me that this is what was most socially unifying about the category of disability. And for me, the explanation of what is socially unifying is solidarity judgements. But there's a worry that, on my account, solidarity judgements 'float free' of what they are tracking (stigma, bodily difference, etc) in a way that's counterintuitive. And even if I'm right that solidarity judgements are what make us *care* about disability as a social category, it doesn't follow that they unify or explain the social category. For that, we might need reference to the things they are tracking - that is we might need a more explicit way of explaining why these solidarity judgements are *disability-related* solidarity judgements. [11] I remain unsure what to make of this issue, and I need to think about it more.

2. Reply to Aas and Howard

Aas and Howard also focus on my treatment of impairment, and offer both some excellent challenges to my arguments and an exciting alternative model of disability. In response, I'll first elaborate about more about my worries with impairment (and the emphasis on the disability/impairment distinction used by various versions of the social model), and then raise some specific worries about Aas and Howard's own proposed account.

I have three primary concerns about the use of impairment in definitions of disability: (i) I haven't yet seen a theory of impairments that I think is both explanatory and extensionally adequate; and (ii) I don't see the need for including impairment, or invoking the disability/ impairment distinction, in our theories of what disabilitiy is, since I think the important philosophical work that needs to be done in this area can be done just by talking about

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[11] Mike Rea pressed me on this point when I was working on this material, and I didn't listen to him. I'm sure I'm not the only person who finds themselves wondering, several years down the line, if Mike Rea was right all along. Mike, if you're reading this, *mea culpa*.

disability; (iii) I worry that the invocation of a disability/impairment distinction leads to an overly disembodied view of disability.

Of these worries, (iii) is what motivates me the most, but (i) and (ii) are interrelated so I'll elaborate on them first. At least as I understand the terrain, there are two main options for developing an account of impairments: naturalistic/biological accounts and socially-oriented accounts. Biological or naturalistic accounts of impairment are perhaps the most familiar. And while I think there might be good prospects in this area for developing a theory of health-related bodily difference, I'm skeptical that a purely naturalistic account of impairment can give us a basis for disability. (That is, I'm skeptical that the social disadvantage incurred by all impairments, in this sense of 'impairment', would count as disabilities, or that all people with disabilities would count as having impairments.)

The alternative is to understand impairment in at least partly social terms - impairments arise due to the interaction between a person's body and their environment, or impairments are a social kind (just a different social kind than disability), or impairment is a biomedical category the extent of which is determined by contemporary medical practice, or etc. Understanding impairment in at least partly social terms gets better results, but it opens, to my mind, a much more pressing question: do we really need the category of impairment at all? We can talk about the way in which certain conditions are stigmatized, pathologized, disadvantaged, etc, just by talking about disability. The disability/ impairment distinction introduces an extra layer of complexity that I remain unconvinced is needed, at least at the level of social metaphysics.

More significantly perhaps, I have concerns about the way that the disability/impairment distinction often functions in theories of disability. Often, the distinct category of impairment serves as a way of screening off or separating a person's biomedical condition from the social disadvantage that such a biomedical condition can incur. We label the former 'impairment' and emphasize that it is the latter - the interaction between a person's biomedical condition and their social world or built environment - that is *disability*. And while I think this move has been a rhetorically powerful way of emphasizing just how much of the disadvantage that disabled people face is social and political rather than biomedical, I also think it leaves us with a deeply inadequate picture of disability. (A picture which has, in some cases, alienated disabled people with medically complex, degenerative, or painful conditions.) There has been an understandable but, I think, ultimately misguided tendency in many discussions of disability to minimize the ways in which, social conditions aside, many physically disabled people sometimes *struggle* with their bodies. The tendency is understandable because non-disabled people often have overly negative views about disability, and so there is a - quite plausible - concern that saying anything bad about the physical reality of disability will reinforce those views. But it's also, I think, misguided, because it leads to views which don't fully characterize disability, and which seem implausibly disembodied to both non-disabled and (some) disabled people alike. 'Impairment', as a category, often serves as a theoretical carpet under which we hide the messy reality of what it can be like to have a disabled body. And my own view is that doing this will inevitably give us an inadequate account of disability. Many disabled peoples' everyday experiences include things like: regularly finding themselves in the hospital for

life-saving medical interventions or surgeries; wondering if they will die young; dealing with the ongoing adaptive process - and grieving process - of a degenerative condition; being routinely gripped by pain. And it has always seemed to me that telling people with these experiences that *disability* is a matter of how they are treated socially, and that these more directly embodied experiences are a matter of 'impairment', is missing something fundamental about what it is like for some people to be disabled. Perhaps this is just a terminological issue - perhaps we can use our words how we want, and if you want to reserve the term 'disability' for socially-mediated disadvantage, fair enough. But I suspect it is more than that. If we are trying to describe *what it is* to be disabled - what the social category is and why it matters - then I think that views which separate disability from impairment leave us with an overly disembodied theory of disability. Disability is, at least for many people, a combination of social factors - exclusion, disadvantage, stigma, shame, etc - and more personal, embodied, and sometimes even medical factors. My own view is that separating these two - making the former disability and the latter impairment - is both unmotivated and unhelpful. A major goal of my book was to argue that we can say *both* that some aspects of disability can be difficult, hard, and painful in a way that would not be alleviated by social progress and that disability is not, by itself, bad difference - and can in many cases be something which enriches and enhances the lives of disabled people. Disability is a many-splendored thing. And I think we do it an injustice if we don't fully and honestly characterize it for what it is. This is both why I have a preference against the disability/impairment distinction and why I wanted to explore a solidarity-based approach to theorizing disability. Solidarity and a sense of shared experience among disabled people is certainly partly rooted in our shared experience of social disadvantage and exclusion. But I do not think that is the full story. Though we may be reluctant to acknowledge it in mixed company, many disabled people also find a collective sense of solidarity in the complicated relationships they have with their bodies. Though the physical details differ, many disabled people have had the experience of being so frustrated with their bodies they could hit something, of feeling completely physically helpless, of wondering if this new drug will work better than the last one, of wondering if this new flare is the beginning of the next degenerative cycle, and so on. Importantly, this more directly embodied sense of solidarity isn't entirely, or even primarily, negative. It can also include shared experiences of having a body that is quirkier than the norm, of having a body that necessitates doing typical daily activities a bit differently than most people do them, of having a body that requires a level of daily thought and care that means you can't really neglect or forget about it. None of these experiences are by themselves negative ones, and many disabled people find them rewarding and valuable. And crucially, many of these sorts of embodied experiences - negative and positive - are ones that would remain even in a much more inclusive world. I thus think a solidarity model can capture the full reality of disability - and the extent to which disability wouldn't obviously go away if we treated disabled people better - better than purely social models, especially those which rely on a disability/impairment distinction.

All of that being said, let me turn to specifically address the model that Aas and Howard propose. I should emphasize that I think this model is incredibly interesting and exciting, and I'm raising worries for it in the spirit of friendly critique. Aas and Howard propose the following definition of disability:

A person, S, is disabled in a context C iff

(i) S is in some bodily or psychological state x [such that]
(ii) x is regularly assumed to involve an impairment: a biomedical difference which limits a major life activity;
(iii) because x is marked as an impairment, someone in state x is marked within the dominant ideology in C as permissibly excludable from socially valued activities; [as a suitable object of pity, etc.], thereby purporting to justify and motivate these responses
(iv) The fact that S is in this state plays a role in S's systemic oppression, that is (i)-(iii) explain why S is actually excluded from certain valued social functionings or relegated to a marginal status along some social dimension.[12]

The specifics of this model allow me to give more concrete examples of the kinds of general worries about impairment I've been discussing. My first worry about an account like this is just that I still don't know what impairments are. Aas and Howard use the language of the ADA's regulations - a 'biomedical difference which [substantially] limits a major life activity'. I think such a definition is useful for practical purposes, especially when coupled - as in the ADA's regulations - with caveats like: 'An impairment need not prevent or severely or significantly limit a major life activity to be considered 'substantially limiting'' and 'The determination of whether an impairment substantially limits a major life activity requires an individualized assessment.'[13] This understanding of impairment strikes me as pragmatically useful but theoretically unsatisfying. (That is, the same definition which works well in legislation gives me pause when written in to a philosopher's account of disability.)

Aas and Howard are no doubt correct that impairment, as it is often used, 'is a term of medical art in our culture'.[14] And I think understanding it as such is a promising way to get to grips with what, if anything, impairments might be. But for that very reason I am reluctant to build impairment into the groundwork of what disability is. I'm sympathetic to Aas and Howard's concern that my model builds in too much deference to experts (in this case, the disability rights community). But I worry that Aas and Howard's model will end up building in another kind of deference to experts - and in this case, it's the wrong experts. In the absence of a purely naturalistic or biological story about what impairments are - and

[12] Aas and Howard (this volume)

[13] US Equal Opportunity Employment Commission, 'Questions and Answers on the Final Rule Implementing the ADA Amendments Act of 2008' <https://www1.eeoc.gov//laws/regulations/ada_qa_final_rule.cfm?renderforprint=1>

[14] As such, they're right to note that being gay isn't properly understood as an impairment. My appeal to orientation in the book, however, was specifically to raise a problem for Boorse's original (and still popular) account of normal function in terms of contribution to survival *and reproduction*. As I note explicitly (*The Minority Body*, note 14, p. 15), Boorse's later, stronger versions of his normal function account avoid this problem, but only by making the account more teleological and thus, to my mind, less plausibly naturalistic.

again, I'm skeptical about the prospects of this - we're pushed toward the view, as Aas and Howard seem to recognize, that part of what makes something an impairment is how it is viewed by contemporary medical practice. The result, of course, will be that whether some condition x is in general viewed as an impairment (clause (ii) of Aas and Howard's definition) will primarily be guided by how the medical community thinks about x. My own view is that this turns the medical community into gatekeepers about which things count as disabilities in a way that is likely to lead to problems and weird results.

For example, although it is ruled out by stipulation in the current regulations of the ADA, 'Gender Identity Disorder' is still a diagnosis in the DSM - a diagnosis which trans people must first establish before they can begin hormone replacement therapy, for example. And on the incredibly broad understanding of 'substantially limits' and 'biomedical difference' generally employed in the interpretation of impairments - recall that it needs to be broad enough to include depression, anxiety, ADHD, etc - 'Gender Identity Disorder' could easily be interpreted as an impairment which substantially limits a major life activity. But trans people aren't disabled, and we shouldn't conclude that they are simply because trans people are overly medicalized by contemporary psychology.

Worries about impairment aside, my main concern with the model Aas and Howard propose - and with social position accounts of disability more generally - is directly related to the worries I expressed about embodiement and the disability/impairment distinction. Aas and Howard off an account that says that what it is to be disabled is to be socially marked for exclusion based on having a condition which is considered an impairment. And while I think they are absolutely right that this is *part* of what it is to be disabled, my concern is that it's inadequate as a full account. I agree that part of what it is to be disabled is to encounter stigma or exclusion due to perceptions about which people it is okay to leave it. But part of what it is to be disabled - at least in many cases - is less directly about how other people treat you because of your bodily difference (or mental or neurocognitive difference), and more about that difference itself. So, for example. Aas and Howard's clause (iv) says that their clauses (i)-(iii) (namely, that S has a condition viewed as an impairment, which marks S out as permissibly socially excluded) 'explain why S is actually excluded from certain valued social functionings.' And I think that's right, as far it goes. The dominant ideology in a disabled person's society will explain why they are actually excluded from *some* valued social functionings. But it won't explain why they're excluded from others. If you spend significant time in the hospital, if you can't rely on your body to have roughly the same capacities from day to day, if you have to schedule your day around the timing of your medications or your treatments, you will have limitations on how you function socially simply because of what your body is like. Now it is crucial to emphasize that often the limitations disabled people face are due to lack of accessibility, lack of understanding, lack of creativity with accommodation, and so on. But I don't think that all the limitations are, at least for a lot of disabilities. And I think that we can value disability while still allowing that life as a disabled person would (again, at least for many disabilities) be very different, and differently limited, than life as a non-disabled person *even if we could eliminate social prejudice against disability*. And so my own view is that a theory of disability which implies that disability could be eliminated if we changed the way we think about or treat disabled people is missing something crucial about the nature of disability.

So those are my main big-picture worries about the model that Aas and Howard propose, related to their invocation of impairment and the disability/impairment distinction. But I also have a few minor worries about extensional adequacies. As noted above, one potential pitfall is that there are things which are currently treated as impairments - in the broad sense - according to the DSM, and which are also stigmatized, but which should not be considered disabilities. Consider, for example, the problem of overgeneralization for the current diagnostic criteria of 'Premenstrual Dysphoric Disorder', which many feminists argue can easily serve as a way to pathologize women's emotions. Certainly someone who exhibits emotional swings before a menstrual cycle can often be regarded as having an impairment, and this can contribute to her social exclusion in many ways, but I think we should be excessively careful in describing such a person as disabled.[15]

Or consider someone who is in a psychological state of of overwhelming sadness - they're crying a lot, they've lost interest in everyday activities, they're struggling to get out of bed on some days. This is the sort of psychological state that would be 'regularly assumed to involve an impairment' - namely, depression. But suppose that this person's psychological state is a direct result of a major distressing life event - a divorce, the loss of a job, a cancer diagnosis, etc. This person isn't disabled, they're just *sad*. And they're sad in a way that is perfectly normal, given what's happened to them. But critics of the DSM's current definition of major depressive disorder routinely point out that our contemporary diagnostic criteria for depressive disorders do a very poor job of distinguishing between depression and ordinary sadness.[16] As a result, it seems plausible that there will often be people who are in a psychological state which is regularly regarded as an impairment, and which is stigmatized as a result, but who are not - and should not be considered - disabled.[17] Worries like this again draw attention back to the role of medical expertise that Aas and Howard's model employs. Just because a person is in a state which meets a specific diagnostic criteria - and faces social exclusion and isolation at least partly as a result of the stigma that follows - doesn't mean that person is disabled.

In summary: I think there can be people who are in a state which is regularly regarded as an impairment, and who face social exclusion as a result, but who should not be considered disabled. And I think one major reason for this is the medicalization of impairments, and the role of medical expertise and diagnostic criteria (which can easily over-generalize) in

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[15] See especially Tamara Kayali Browne (2015): 'Is Premenstrual Dysphoric Disorder Really a Disorder?' *Journal of Bioethical Inquiry* 12 (2):313-330.

[16] See especially Allan Horowitz and Jerome C. Wakefield (2007): *The Loss of Sadness*. Oxford: OUP.

[17] This is not to say that the person experiencing depression is in the same psychological state as the person experiencing intense sadness - these states may be neurochemically or phenomenologically very different things. But Aas and Howard's model requires only that a psychological state be *regularly regarded as* an impairment, not that the state actually *be* an impairment. And it since contemporary psychiatric diagnostic practices struggle to differentiate depression from ordinary sadness, it seems plausible that ordinary sadness - when intense or particularly visible - can often be regarded as an impairment, and stigmatized as such.

determining which conditions are 'regularly regarded' as impairments. And for this reason, I'm not sure that a model like Aas and Howard's will be extensionally adequate as a definition of disability.