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Would the implementation of the UN CRPD help the disabilities enjoy fair human rights in the US?

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Abstract

Modern discrimination is implicit. The paper finds out the implicit discrimination which comes from the mindset. So called, the ‘cognitive discrimination’ excludes the explicit discrimination prohibited by the legal language of the anti-discrimination law in the US. The United Nations Convention on the Rights of Persons with Disabilities (CRPD) Article 12 states the fair recognition of disabilities. The paper tests if the UN CRPD can extend its meaning of fair recognition to reduce the hidden prejudice.

First, the project uncovers the ables’ bounded rationality once they aware the disability, which infringes the UN CRPD Article 12. The awareness of the mental disability goes beyond the Ordinary Common Sense (OCS), triggering the irrationality. The cognitive discriminators undervalue the disables’ capacity; while they care for their group-security. The project argues whether the difference in perceptive risks pushes them to the vicious circle of the cognitive discrimination, securing their double-standard of thoughts; or, if it is the ables’ innate reflex to live non-contagious.

Second, the paper focuses on the disparity of perception; the inferior group perceives the event discrimination, while the superior group does not perceive the same event discrimination; the segregated groups produce different information about the same event. The paper surveys how the perception differs between the disables and non-disables and what triggers this difference.

Third, the paper argues the informational inferiority or unfair privacy rights; “I do not know what others are fore-told about my disability” creates tragedy of disability. The tension between the person with a veil of ignorance and people with the cognitive discrimination makes ‘markets for lemon’; like the public park suffering from the hedonic freerider’s informational littering once they disclose the park with no cost. How far is the disabilities right to decide whether to disclose or non-disclose their private information under the individual autonomy?

Forth, the Americans with Disability Act (ADA) is criticized that it legally forces the non-disabled people to respect the disability; its implementation fears the employers and does not reduce the conscious awareness. The paper tests if the ADA’s void of perceptive discrimination can be overcome by the ‘fair recognition’ in the UN CRPD. Also, it deploys  

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1 Russell Robinson, Perceptual Segregation, 108 Colum. L. Rev. 1093
2 The CRPD Preamble (n) Recognizing the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices.
3 Elizabeth Emens, Framing Disability, 2012 U. Ill. L. Rev. 1387
the equal protection clause of the Fourteenth Amendment can be used to diminish the ‘unequal recognition.’

Keywords: disability rights, bounded rationality, asymmetric information, the UN CRPD, the ADA, equal recognition, sanism

Legal Resources
The United Nations Convention on the Rights of Persons with Disabilities (UN CRPD)
The Americans with Disability Act (ADA)
The US Constitution Fourteenth Amendment

Methodology
Experiments for “disparity of perception”
Focal Point (Schelling, 1960): the word of ‘mental illness’ as salient focal point which drives the cognitive decision.
Market for Lemon (Akerlof): Freerider’s hedonic cost.