



UNIVERSITY
OF WOLLONGONG
AUSTRALIA

2005

Wheelchair as semiotic: space governance of the American handicapped parking space

S. Marusek

University of Massachusetts, US

Follow this and additional works at: <http://ro.uow.edu.au/ltc>

Recommended Citation

Marusek, S., Wheelchair as semiotic: space governance of the American handicapped parking space, *Law Text Culture*, 9, 2005.

Available at: <http://ro.uow.edu.au/ltc/vol9/iss1/8>

Wheelchair as semiotic: space governance of the American handicapped parking space

Abstract

The wheelchair has become a stereotypical symbol of physical disability. The image may appear as a picture, as on parking signs with a blue background and a white figure sitting in a wheelchair, or in reality when one sees an actual person sitting in one. Both images are useful in characterising the governance of the handicapped parking space, a field that presents a unique case study in the interpretation and enforcement of law. The parking space is legally reserved for vehicles marked by the Blue Wheelchair which hangs as a tag from the rearview mirror or on the licence plate; but at the same time it is socially reserved for vehicles driven by a person who is dependent upon an actual wheelchair. Law enforces this space formally by ticketing and/or towing violating vehicles. Society enforces this space informally through the disciplining gaze of onlookers. Legal enforcement is based upon the presence of the Blue Wheelchair symbol as it matches the sign that towers above the reserved spot. Social enforcement judges and disciplines through the qualifying observation of visible disability in the form of a wheelchair. However, what happens when a Blue Wheelchair symbol is present, but an actual wheelchair is absent? Which source of legitimacy is treated as the more authoritative?

Wheelchair as semiotic: space governance of the American handicapped parking space¹

Sarah Marusek

Introduction

The wheelchair has become a stereotypical symbol of physical disability. The image may appear as a picture, as on parking signs with a blue background and a white figure sitting in a wheelchair, or in reality when one sees an actual person sitting in one. Both images are useful in characterising the governance of the handicapped parking space, a field that presents a unique case study in the interpretation and enforcement of law. The parking space is *legally* reserved for vehicles marked by the Blue Wheelchair which hangs as a tag from the rearview mirror or on the licence plate; but at the same time it is *socially* reserved for vehicles driven by a person who is dependent upon an actual wheelchair. Law enforces this space formally by ticketing and/or towing violating vehicles. Society enforces this space informally through the disciplining gaze of onlookers. Legal enforcement is based upon the presence of the Blue Wheelchair symbol as it matches the sign that towers above the reserved spot. Social enforcement judges and disciplines through the qualifying observation of visible disability in the form of a wheelchair. However, what happens when a Blue Wheelchair symbol is present, but an actual wheelchair is absent? Which source of legitimacy is treated as the more authoritative?

Wheelchair as semiotic

Different as they are, both forms of governance — the formal/legal and the informal/social — reflect the defining parameters of disability according to the *Americans with Disabilities Act* 1990. The *ADA* defines a person with a disability to include ‘a physical or mental impairment that substantially limits one or more of the major life activities, [having] a record of such an impairment...or, being regarded as having such an impairment’. This last part of the definition means that a person who is ‘regarded’ as disabled is disabled. But the Blue Wheelchair sign leads people to think that ‘being regarded’ as disabled requires physical impairment and a wheelchair. So the legal criteria of ‘*being regarded as having such an impairment*’ in fact encourages the observing social gaze and entrenches the stereotype of the wheelchair as the governing semiotic which makes disability legible.

This paper explores the semiotic of the wheelchair as it is used as a tool governing the occupancy of the handicapped parking space based around the use of the word ‘regard’ from the *ADA*’s definition of disability. First, the idea of ‘regarding’ will be examined in terms of the disciplining gaze which in fact governs the space both from the point of view of the law and through the observation of onlookers (Foucault 1995). Donna Fletcher’s (2001) notion of the guilt gradient will be tied to Cope et al’s (1991) study of the posted sign of the Blue Wheelchair as designated reserved space. Second, ‘regarding’ is not just a site of biopolitical governance (Foucault 1994, Rose & Valverde 1998) but one that is contested through everyday interpretations of the language of the law (Brigham unpublished). Lastly, the phenomenon of citizen-ticketing demonstrates the power of practices of social enforcement on the margin between formal and informal modes of ordering (Brigham 1996). Both legal and informal norms demand the stereotypical image of the wheelchair to be present, while at the same time encouraging the gaze as the verification of disability. In conclusion, this argument will highlight the limitations of heralding litigation as the optimal solution to disability-based discrimination as it prioritises formal governance over social governance in the enforcement of parking rights (Burke 2002).

Marusek

The gaze

Drivers who park in a handicapped parking space are stared at. These stares verify their rightful occupancy of the space by visually determining their impairment. The disciplining gaze is a form of surveillance that Michel Foucault (1995) calls the 'faceless gaze'. In his analysis of Bentham's Panopticon, prisoners reside in cells without doors detained only by their own assumptions that the guard station in the centre of the prison is always watching. 'Surveillance [is] based upon a system of permanent registration' and power is visible but not verifiable (Foucault 1995: 214, 196). In this way, the faceless gaze is the gaze that disciplines. Foucault states that 'the major effect of the Panopticon [is] to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power.' The concern is 'with individualizing observation, with characterization and classification, [and] with the analytical arrangement of space' (1995: 202, 201).

Thus in our case study, the faceless gaze is directed at the driver of the occupying vehicle from onlookers constantly policing the rightful occupancy of that space. Drivers *regarded* as disabled through the use of the wheelchair are treated as rightful occupants. They will 'be regarded' as disabled according to the presence of an actual wheelchair. In this way, the stereotype of the wheelchair creates a system of permanent registration precisely in order to satisfy the moral scrutiny of onlookers. Indeed, just as Foucault predicts, the handicapped parking space is a type of Panopticon wherein the threat of being disciplined for not 'being regarded as disabled' keeps many people who are not in wheelchairs — disabled or otherwise — from parking there. The panoptic 'arrangement ... programmes ... the basic functioning of a society penetrated through and through with disciplinary mechanisms' (1995: 209). Indeed, the legal insignia of the Blue Wheelchair and the actual wheelchair provide us with an example of disciplinary mechanisms that work together. Because the image of a wheelchair is the legal sign for disability, social surveillance is conditioned to see disability in the form of an actual wheelchair. In this way, the qualification of 'being regarded

Wheelchair as semiotic

as disabled' itself depends on the gaze and the image as a source of law: the gaze either verifies social belonging based on physical impairment or validates or overrides the legal record of disability hanging from the rearview mirror.

Foucault tells us that the purpose of discipline is to fix, particularly to arrest or regulate movement (1995: 219). In the context of the parking lot, the disciplining gaze comes to regulate the movement of drivers *themselves* within the handicapped parking space. As an example of this psychic regulation, Donna Fletcher (2001) has documented what she refers to as 'the guilt gradient' in the illegal use of reserved parking spaces. Her study is based on the observation of the behaviour of violating drivers, or those able-bodied drivers without wheelchairs. She determines that such drivers feel the most guilty when parking in conspicuously visible handicapped spaces. Parking in the 'least conspicuous reserved space', or the handicapped parking space furthest from the door occurred most frequently. She also unauthorised parking practices in handicapped spaces according to a host of justifications ranging from ignorance (didn't see the handicapped sign), laziness, miscellaneous excuses (having a sick dog, needing to use the restroom), to downright deceit (exiting the vehicle with a limp only until safely inside the building). Fletcher describes the guilt gradient in relation to threats of penalty from condemning bystanders who socially enforce this space through the disciplining gaze or through audibly asserted outrage. Of course, legal enforcement through possible police actions of ticketing or towing the illegal vehicle was just as preventative as frowns and condemning stares. She concludes that 'it would not hurt to locate reserved parking spaces in conspicuous areas' as the guilt gradient is directly influenced by visibility (Fletcher 2001: 161).

The visibility of freestanding signs as a notice of reserved space, and therefore their public nature, is more effective at keeping those who didn't belong out than pavement markings or fines (Cope et al 1991). 'Many individuals illegally using spaces reserved for the physically disabled are aware of their non-sanctioned behavior and might reasonably be expected to consider being seen and publicly admonished as a punishing consequence' (Cope et al 1991: 62). Connected to the

Marusek

disciplining gaze that regulates and fixes movement is the idea of spatialisation, or ‘the ways in which legal practices are involved in the constitution of ... governable spaces’ (Rose & Valverde 1998: 549). Nikolas Rose and Mariana Valverde (1998) tell us that the spatialisation of governable conduct directs the routines of everyday life and ‘entail[s] codes that embody specific conceptions of desirable and undesirable conduct’ (1998: 549). The governable space of handicapped parking combines modes of legal authorisation for disabled drivers, with (through the ADA’s definition of disability as ‘being regarded as disabled’) procedures of social adjudication. The handicapped parking space is likewise a governable space according to Francois Ewald’s idea of social law, ‘law which is welded to the power of the norms’ (Rose & Valverde 1998: 544). This means that social law is framed by the *connection* between social norms and the interpretation of those norms. Thus the legal force that operates so powerfully in law’s adoption of the image of the wheelchair as the sign for disability derives from at the same time as it participates in the constitution and sustenance of the social norm as to the nature of disability. The image of the wheelchair links social to legal justification, and formal to informal practices of enforcement.

Space is socially governed as governance is spatially articulated, and each are legitimated by their constitutive relationship. Consider the episode entitled ‘The Handicapped Spot’ from the television sitcom *Seinfeld* (episode 63 first aired 13 May 1993). Here’s what happens: The gang are patrolling a New York shopping mall for a place to park. All the spots are taken, except for the handicapped spot. George, the driver, is in a quandary: does he park there or not? Kramer suggests taking it, as there are no other available spaces to be seen. Elaine disagrees, assured that there will be available spaces in another lot. The following conversation ensues:

George: I don’t want to walk that far.

Elaine: What if a handicapped person needs it?

Kramer: Oh, come on, they don’t drive!

Jerry: Yes, they do.

Kramer: Have you ever seen a handicapped person pull into a space and park?

Wheelchair as semiotic

Jerry: Well, there are spaces there, they must drive!

Kramer: Well they don't. If they could drive, they wouldn't be handicapped.

Elaine's concern is a form of disciplined conduct, an interiorisation of modes of surveillance. She is aware that the space is reserved for the handicapped driver presumed to be in a wheelchair. Kramer's response, that handicapped people can't drive, is in fact a re-articulation of the social law we have been analysing, although here it has been heightened, for comedic purposes, until the handicapped driver takes on the form of a paradox or oxymoron. Albeit ironically, the oxymoron reinforces the disciplining gaze of social law by insisting that physical disability must be visible in order to be socially legitimate. Kramer in fact highlights the paradox of a social law that considers itself entitled to judge impairment only on the basis of what it sees and already expects to see.

Biopolitics

The oppressive implications of this kind of paradoxical judgment is not just a fiction. In *People v James McNally* (2001), James McNally, who had parked to read a sign, parked in such way that access to three handicapped parking spaces was blocked. Joan Binnie, a handicapped driver who was looking to park in one of these three spaces, honked her horn and pointed to her blue wheelchair placard hanging from her rearview mirror. Irritated, McNally, thinking that the woman behind the wheel was giving him the finger, called out 'Fuck you asshole!' and reluctantly moved his vehicle. However, after observing Binnie exit her car without the assistance of a wheelchair, he violently yelled, 'You ain't no fucking gimp, I should get out and bash you!' McNally visually judged Binnie to be illegitimate in her occupancy of the space because she was able to walk. Even though she displayed the legal qualifier of the blue wheelchair placard and pointed to it for McNally's benefit, McNally nonetheless based his judgment on the absence of an actual wheelchair. 'Lumping together people of such diverse fates [that] disguises the complexity of their problems' (Burke 2002: 60), McNally expected that because Binnie displayed the Blue Wheelchair placard,

Marusek

she would be in a wheelchair. Although Binnie was handicapped with Multiple Sclerosis, McNally did not 'regard' her 'as disabled'. Social norms of visibility trumped the legal semiotic of the Blue Wheelchair.

While not all disabled people look disabled, they are nonetheless governed because of their bodies. Foucault describes the governance of bodies as biopolitics, or 'the endeavor to rationalize the problems presented to governmental practice by the phenomena characteristic of a group of living human beings constituted as a population' (1994: 202). McNally's violent response was a kind of biopolitical governance of Binnie.

Biopolitics disciplines in response to conduct and appearance. In the next case, the social enforcement of the disciplining gaze is confronted by the social enforcement that disciplines the body itself. In Peoria, Illinois, an elderly man was violently attacked and sexually assaulted by the same two men whom he had scolded for parking in a handicapped zone (Cope et al 1991). Their able-bodied appearance incited the elderly man's sense of entitlement to enforce the established norms of social expectation. But this disciplinary gaze itself invoked an angry response in the two men. So the word 'regard' has dual meanings here. The elderly man 'regards' the lack of disabled appearance by the two men while the two men for their part 'regarded' the elderly man as claiming a right to social rather than legal enforcement and violently resisted his legal authority to do so.

Law as forum

The handicapped parking space illustrates the idea of law as forum. The community of the parking lot is a 'repository of visible and invisible structures of law that shape political life' (Brigham 1996). John Brigham's notion of the law as forum involves law that 'operates on the surface' and law that 'operates in society and on our consciousness' (Brigham 1996: 154). As a place where 'ordinary people ... actively interpret the law and give it meaning as applied to them,' Brigham further asserts, 'what people know with reference to legal forms is a source of law'

Wheelchair as semiotic

(Brigham unpublished, 1996: 137). This means that ordinary people who regard the occupant of the space expect to see a wheelchair because the legal sign of disability is a picture of a wheelchair. This is law operating on the surface. Legally, a wheelchair is present, so socially, there must also be one. This is law operating in society and on our consciousness. In thinking of this space in these terms, social enforcement is mixed with legal enforcement, legal norms are interpreted and enforced socially, and social norms are given legal authority through social action.

If legal enforcement of this space is in the tangible form of a ticket and social enforcement is through the intangible disciplining gaze, then the citizen-ticket is evidence of the amalgamation and commingling of both: the distinction between formal and informal law is by no means so neat and clear. The citizen-ticket is a piece of paper that resembles a legal ticket and is posted on vehicles interpreted as violators by fellow citizens. It is law operating on the surface, rebuking drivers of vehicles who are not 'regarded as disabled'. What is interesting about the citizen-ticket is that they are frequently paid by those who receive them even though the ticket has no formal legal status. The citizen-ticket is a form of law operating on the consciousness of the violator and may be paid because it so closely mimics a legal form on the one hand, and a social judgment, on the other, that people recognise it as a source of law.

The story of Sharon White Taylor exemplifies this logic (1996). Handicapped by a stroke, Taylor socially enforces spatial governance in the handicapped parking space by distributing citizen-tickets. Her mission is to increase awareness of its non-handicapped exploitation by drivers not in wheelchairs. She regulates the space by 'waging a campaign against the able-bodied who are too lazy to walk extra steps'. The turf that she fights for is considered fundamental to the quality of life of disabled drivers in wheelchairs for those 'spaces close to the destination and wide enough to unload wheelchairs are essential for disabled persons to conduct their daily lives.' She views the space of the handicapped parking space as a right of necessity for the physically disabled and not as 'a perk' or privilege. Taylor confronts the public by

Marusek

challenging dishonest activity (that is, the ‘parking cheat’) and the absence of visibly legitimate qualifications of handicap (that is, ‘confronting a woman without a limp (or parking sticker)’). Taylor issues citizen-tickets to violators by leaving brightly colored placards on cars that do not belong in the handicapped parking space in order to expose them as ‘selfishly inconveniencing the disabled’. Her expectation is that the driver, upon returning to his/her vehicle and finding such a public and visible marker of shame, will ‘look sheepish and glance around to see if anyone has noticed’.

Another example of the citizen-ticket is that deployed by handicapped rights activist Matthew Lakota of Chico, California (*Chico News and Review* (2004)). In August 2002, Lakota distributed citizen-tickets on three cars parked in handicapped parking spaces that appeared to visibly violate that space even though ‘some of those ... ticketed were actually disabled but had expiring parking placards’. Lakota has gone further than Taylor in making the leap from social enforcement to legal enforcement. Drivers ticketed by Lakota paid a total sum of \$760, which was deposited by Lakota into his personal bank account. A different type of legal enforcement stepped in however, and Lakota was arrested, charged with impersonating a police officer and attempted extortion. He was convicted of ‘using phony parking tickets to extort money from drivers parked in handicapped parking spaces’ and charged with the felonies of attempted extortion and receiving stolen property. Ordered to serve 400 hours of community service and to pay more than \$4000 in fines, Lakota’s defence was that he was ‘legally allowed to dispense the tickets because they are notices of his intent to file civil suit’. Lakota’s claim is that legally, he is entitled to socially enforce the handicapped parking space. Here too, then, the legal and the social begin to seem indistinguishable from each other. Furthermore, those who were ticketed actually paid the excessive fines that Lakota’s hand-fashioned tickets demanded: for violators no less than for enforcers, compliance is a question of more than formal right. Indeed, the fact that some of these drivers were legally disabled (albeit with expired placards) only further emphasises the importance of the visible in the shifting sands of legal and social authority.

Conclusion: revisiting the ADA

As this paper illustrates, the handicapped parking space is a space that is reserved for disabled drivers; nevertheless, the twin semiotics of the Blue Wheelchair, and the actual wheelchair are in normative competition. The source of this competition is the ADA's own definition of disability. The use of the word 'regard' results in the legal enforcement of the display of Blue Wheelchair through ticketing and towing, while the social enforcement of that driver being in a wheelchair is found in the disciplining gaze, the towering sign, biopolitical judgments, and the citizen-ticket.

Not all agree. Thomas Burke views the enforcement of the ADA as resting solely with legal authorities. Judges, in his formal sense of the word, ignore the social enforcement of handicapped rights in the everyday public sphere. His preference for legal recourse within the parameters of formal litigation dismisses as irrelevant the complex ways in which law is constituted, interpreted, and enforced every day in parking lots themselves. In that sense, his claim that 'the implementation of the ADA is *ultimately* in the hands of judges' (Burke 2002: 92) is at the very least problematic. Nevertheless, Burke's assessment that 'people with disabilities are oppressed more by society than by their disabilities' is more true than false (Burke 2002: 70). In concluding this examination of right and might, we must question the fundamental nature of the ADA's definition of disability and its reliance on the visual representation of the wheelchair. The wheelchair, as this paper has shown, is a stereotype of disability. Until the formal use of a wheelchair as the legal semiotic of disability is changed, the social imaginary it conjures up will also continue and continue to be enforced — symbols made real in a complex world, and with real, complex, and sometimes contradictory effects.

Note

- 1 This paper, originally written for Political Science Professor John Brigham's 'Issues in Constitutional Law' Graduate Seminar, Spring 2004, University of Massachusetts/Amherst, was presented at the International Roundtable

Marusek

for the Semiotics of Law, Montreal, April 2005. I wish to express my enthusiastic appreciation to both John Brigham and to the Roundtable participants for their insights, laughter, and encouragement.

References

- Americans with Disabilities Act* 1990 [42 USCA 12102(2)].
- ‘Angry Handicapped Parking Space Encounter Was Not Harassment Under Penal Law @ 240.26; *People v. James McNally*’ 2001 *New York Law Journal* 18 September
- Brigham J unpublished *Construction Sites: Law and Material Life* manuscript
- 1996 *The Constitution of Interests: Beyond the Politics of Rights* New York University Press New York
- Burke T 2002 *Lawyers, Lawsuits, and Legal Rights: The Battle Over Litigation in American Society* University of California Press Berkeley
- Cope J G, Allred L J and Morsell J M 1991 ‘Signs as Deterrents of Illegal Parking in Spaces Designated for Individuals with Physical Disabilities’ *Journal of Applied Behavior Analysis* 24/1: 59
- Fletcher D 2001 ‘A Guilt Gradient in the Illegal Use of Parking Spaces Reserved for People with Disabilities: Field Observations Over Five Years’ *Perceptual and Motor Skills* 93/1: 157
- Foucault M 1994 ‘The Birth of Biopolitics’ in Rabinow et al 1994: 202–7
- 1995 *Discipline and Punish: The Birth of the Prison* Trans A Sheridan Vintage Books New York
- Rabinow P and Rose N eds 1994 *The Essential Foucault: Selections from Essential Words of Foucault 1954-1984* New Press New York
- Rose N and Valverde M 1998 ‘Governed by Law?’ *Social & Legal Studies* 7/4 Sage Publications London
- Taylor S W 1996 ‘You’re in My Spot: I’m waging a Wheelchair Campaign Against Cheaters Who Park in handicapped Zones’ *Newsweek* 127/8: 20