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The Art of Access: Innovative Protests of an Inaccessible City

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THE ART OF ACCESS: INNOVATIVE PROTESTS OF AN INACCESSIBLE CITY

Elizabeth F. Emens*

ABSTRACT

This Essay considers inaccessible New York City through the lens of artistic production. The landscape of disability art and protest is vast and wildly diverse. This Essay proposes to capture one slice of this array. From Ellis Avery’s Zodiac of NYC transit elevators, to Shannon Finnegan’s Anti-Stairs Club Lounge at the Vessel in Hudson Yards, to Park McArthur’s work exhibiting the ramps that provided her access to galleries showing her work — these and other creative endeavors offer a unique way in to understanding the problems and potential of inaccessible cities. Legal actions have challenged some of the specific sites these artists address, which will inform the Essay’s study of the interplay between disability, creativity, and urban life.

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INTRODUCTION

Not long before receiving tenure, a senior colleague told me that one moment in a draft of mine had prompted him to realize, for the first time, why we need accessibility for disabled people.¹ The draft was of an article eventually published under the title *Intimate Discrimination: The State's Role in the Accidents of Sex and Love*.² The setting was his office, where he had called me to deliver his comments on the last major piece for my tenure file. I was most certainly nervous.

You can imagine my relief when he told me that the article was successful. You may also share my surprise that he singled out one passage of this nearly 100-page article for special praise: an entirely fictional narrative I had invented. The passage hypothesized a disabled woman — a paradigmatic wheelchair user — and contrasted how different her romantic life would be, and how different life would be for her partner, in a highly accessible city versus in a highly inaccessible city.³

This colleague was a highly educated person trained as a lawyer who had been teaching law for decades. It was deeply troubling that he (apparently) did not much see the purpose of disability access before that point. But it was also intriguing to think that, if something was going to bring him along, this narrative was it. His mind was apparently changed by a fictional text — an artistic representation of sorts, and not even one with claims to literary merit.

Just over a decade later, I had the honor of participating in this powerful symposium on accessible cities at Fordham Law School, for

1. Debates over people-first language (as in “people with disabilities”) versus disability-first language (as in “disabled persons”) implicate multiple questions, including whether people should be prioritized over disabilities or whether disability should be embraced and even foregrounded; whether the social model should be prioritized over other models and, if so, whether the social model fits better with an approach that puts people first or, instead, makes sense only if people are understood as “disabled” by the environment; and whether the language tendencies from one country or another should dictate our usage. I see merits to both terms and thus alternate between people-first and disability-first language. For further discussion in the context of discussing the social model of disability, see, for example, Elizabeth F. Emens, *Framing Disability*, 2012 U. ILL. L. REV. 1383 (2012).

2. Elizabeth F. Emens, *Intimate Discrimination: The State's Role in the Accidents of Sex and Love*, 122 HARV. L. REV. 1307 (2009) [hereinafter Emens, *Intimate Discrimination*].

3. The relevant narrative portion from that article is included in the Conclusion of this Essay. See *infra* note 130 and accompanying text; see also Emens, *Intimate Discrimination*, *supra* note 2, at 1370–71.

which this Essay is a contribution. At the event, an organizer told me that that same narrative portion of my earlier article had helped to shape the symposium.⁴ These two moments sparked the theme of this Essay: the power of narrative and artistic expression to shape attitudes and perceptions of disability and accessibility.

Scholars have discussed the importance of attitudes to the implementation of disability law.⁵ When the Americans with Disabilities Act (ADA) was passed with bipartisan support in 1990, this landmark civil rights legislation broke important new ground.⁶ But the courts interpreted the ADA narrowly, severely limiting its scope and impact,⁷ and Congress needed to pass a revised ADA Amendments Act in 2008.⁸ As this history depicts, societal attitudes matter, and when law is out ahead of attitudes, the law may have little impact.⁹ This raises the vital question: What shapes attitudes?

The suggestion here, which will be presented though not proven in this short symposium piece, is that narrative and artistic expression can play a powerful role in shaping attitudes — and thus in shaping the law in action. The power of narrative is not a new subject, nor will I delve into the voluminous literature on the subject. Instead, I will take this occasion to set into relief the meaning of inaccessible and accessible New York City through the lens of several artistic works: Ellis Avery's *Zodiac of the New York City subway elevators*; Shannon Finnegan's *Anti-Stairs Club Lounge* at the *Vessel* in Hudson Yards; and Park McArthur's work exhibiting the ramps set up for her at exhibitions, including her own. I

4. I reached out to the symposium organizers to confirm this; I of course only want to say this if it is true. And nothing in this piece depends on it.

5. See, e.g., Samuel R. Bagenstos, *Subordination, Stigma, and "Disability,"* 86 VA. L. REV. 397 (2000); Elizabeth F. Emens, *Disabling Attitudes: U.S. Disability Law and the ADA Amendments Act*, 60 AM. J. COMP. L. 205 (2012) [hereinafter Emens, *Disabling Attitudes*].

6. See Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (1990); see also, e.g., JOSEPH SHAPIRO, NO PITY: PEOPLE WITH DISABILITIES FORGING A NEW CIVIL RIGHTS MOVEMENT 116–19 (1993).

7. See, e.g., *Toyota Motor Mfg. v. Williams*, 534 U.S. 184, 197 (2002); Kevin Barry, *Toward Universalism: What the ADA Amendments Act Can and Can't Do for Disability Rights*, 31 BERKELEY J. EMP. & LAB. L. 203, 246 (2010); Ruth Colker, *The Americans with Disabilities Act: A Windfall for Defendants*, 34 HARV. C.R.–C.L. L. REV. 99, 99–100 (1999); Chai R. Feldblum, *Definition of Disability under Federal Anti-Discrimination Law: What Happened? Why? and What Can We Do about It?*, 21 BERKELEY J. EMP. & LAB. L. 91, 148–57 (2000).

8. ADA Amendments Act of 2008, Pub. L. No. 110–325, 122 Stat. 3553, 3553–54 (codified as amended at 42 U.S.C. § 12101).

9. See, e.g., Emens, *Disabling Attitudes*, *supra* note 5.

will return to the theme of law's role and relation to artistic production throughout and in conclusion.

* * *

One federal judge likes to say that when reading a well-written brief, you can usually tell by the end of the facts section who will win.¹⁰ The facts in a brief are not fiction; they are not art in the usual sense. But the potency of narrative is typified by the judge's observation. How a story is told shapes a judge's prediction, and thus perhaps a judge's inclination, as to who will prevail. Throughout this Essay, the invitation to the reader is to notice, while reading, whether the narrative or artistic accounts affect your views and perceptions in the same ways or in different ways than the legal and statistical accounts.¹¹

I. SUBWAY ELEVATORS: ELLIS AVERY'S NEW YORK CITY MTA ZODIAC

Cancer: 34th Street/Herald Square

One tiny elevator serving seven subway lines and the PATH train, you'd rather not work at all, moody Cancer, and when you do, your one-door configuration requires wheelchair-using passengers to turn around — impossible in your straitened confines — or head backward into one of midtown Manhattan's most brutally crowded intersections. Hidden in a tangle of scaffolding, your metal walls offer the privacy that the padlocked bathrooms of Herald Square fail to: your aromatherapy highlights are better left to the imagination.¹²

— *Ellis Avery, What Sign of the MTA Elevator Zodiac Are You?*

In 2015, the writer Ellis Avery published an essay entitled, *What Sign of the MTA Elevator Zodiac Are You?*¹³ Avery, whose cancer had led her to use a mobility scooter,¹⁴ was keenly familiar with NYC's antiquated

10. Anonymous personal communication.

11. This Essay therefore exemplifies what I have elsewhere called “experiential legal scholarship.” See Elizabeth F. Emens, *Enabling Mindfulness*, U. CONN. L. REV. (forthcoming 2021).

12. Ellis Avery, *What Sign of the MTA Elevator Zodiac Are You?*, PUB. BOOKS (Apr. 10, 2015), <https://www.publicbooks.org/what-sign-of-the-mta-elevator-zodiac-are-you/> [<https://perma.cc/LVN4-GHDW>].

13. *Id.*

14.

Ellis always referred to her device as a mobility scooter, not a power chair. Power chairs, I think, refer to a much heavier and larger object which is relevant here — Ellis chose a mobility scooter because her experiments with a power chair led

transit system. She had intimate knowledge of the insides of its (all too uncommon) elevators, which formed the basis for her clever tack in this piece.

Avery assigned the 12 signs of the Zodiac to different elevators in New York City's subway system, the Metropolitan Transit Authority (MTA), using this conceit to elaborate on the functionality, personality, and smells of these notoriously unreliable contraptions.¹⁵ The epigraph above features her MTA elevator Zodiac entry for a subway station not far from the building that housed the *Fordham Urban Law Journal's* symposium on accessible cities.

Avery, who died in February 2019, was an award-winning novelist,¹⁶ a poet who had written a haiku each day for 19 years, and a teacher of writing. Through her artist's eyes, Avery saw a way to convey the dreary, confining, unreliable, and sometimes just disgusting transit elevators of New York City as sites of curiosity and sensory stimulation. She found an occasion for dark humor.

Consider this entry for a station near my own institution:

Aquarius: 125th and Saint Nicholas

Hey, Aquarius! The nearest accessible subway to Columbia University and located in central Harlem steps from Manhattan's only Chuck-E-Cheese, you are the life of the cross-class, interracial, world-straddling party. Although you are among the most crowded of subway elevators — and discharge passengers onto one of the busiest of urban corners — you have a poetic side: in spring your glass walls offer a glimpse of a magnificent paulownia tree whose purple flowers wow riders from blocks away. Your aromatherapy highlights? New sneaker and old coffee.¹⁷

Avery uses her creativity in these entries to engage in some writerly activism — to call attention to the dismal state of the transit system in an inspiring way.

her to conclude it was impossible to use it on public transportation because of its size and weight.

Email from Sharon Marcus, Professor of Eng. & Compar. Literature, Columbia Univ., to Elizabeth F. Emens, Prof. of L., Columbia L. Sch. (Aug. 20, 2020, 12:25 PM) (on file with author) (Professor Sharon Marcus is Ellis Avery's widow).

15. See Avery, *supra* note 12.

16. She is the only writer to have won two Stonewall Book Awards, in addition to the other awards she won. See Julie R. Enszer, *Ellis Avery: On Writing through Grief, Sadness, and Recovery*, LAMBDA LITERARY (Feb. 29, 2016), <https://www.lambdaliterary.org/2016/02/ellis-avery-on-writing-through-grief-sickness-and-recovery/> [<https://perma.cc/35YV-V5KZ>].

17. Avery, *supra* note 12.

Here are some less poetic facts about New York City’s subway system: only 99¹⁸ of 472¹⁹ subway stations in the five boroughs are designated as “wheelchair accessible.” Moreover, many of those 99 are not truly accessible in either of two ways. The first way is that some (13 of the 99) are, structurally, only partially accessible, in the sense that the elevators provide access to some but not all lines or platforms serviced by a particular station.²⁰ The second way is that, as users know far too well, the elevators are often out of service; according to one recent study, “on average, each subway elevator breaks down 53 times a year.”²¹ As a result, “[m]any riders who rely on them make it a daily ritual to check apps and websites that track out-of-service elevators,” but the sites are reportedly slow to post updates.²² All of that app-checking for service interruptions, plus the rerouting and juggling of schedules when service is out, is a taxing form of “disability admin” that drains the time and energy of people with disabilities, which I have written about elsewhere.²³

The lack of accessible subway stations leads to what some have called “ADA transit deserts”: of the 122 neighborhoods served by NYC’s subways, 62 neighborhoods lack an accessible subway station.²⁴ In some

18. See *MTA Accessible Stations*, METRO. TRANSP. AUTH., <http://web.mta.info/accessibility/stations.htm> [<https://perma.cc/YE4P-C5LK>] (last visited Sept. 13, 2020); see also *Accessible Highlight Map*, METRO. TRANSP. AUTH., <https://new.mta.info/map/5346> [<https://perma.cc/E7QP-6LQM>] (last visited Sept. 13, 2020) (displaying subway map with wheelchair accessible stations highlighted).

19. *How to Ride the Subway*, METRO. TRANSP. AUTH., http://web.mta.info/nyct/subway/howto_sub.htm [<https://perma.cc/EJ8F-PXDN>] (last visited Aug. 22, 2020) (“The New York City subway has 472 stations serving 27 subway lines . . .”).

20. For example, the 14th Street–Union Square station has a wheelchair accessible elevator, but the elevator only enables access to the L, N, Q, R, and W train platforms. Able-bodied passengers with the freedom to bypass the elevator, however, can also access the 4, 5, and 6 train platforms via the 14th Street–Union Square station.

21. James Barron, *For Disabled Subway Riders, the Biggest Challenge Can Be Getting to the Train*, N.Y. TIMES (July 26, 2018), <https://www.nytimes.com/2018/07/26/nyregion/disabled-subway-riders-elevators.html> [<https://perma.cc/7LKR-ADGZ>].

22. *Id.* As of the Sunday before Fordham’s symposium on accessible cities, February 9, 2020, 6 of the 99 stations designated as “accessible” actually had out-of-service elevators, and thus were not currently wheelchair accessible. See *Elevator and Escalator Status*, METRO. TRANSP. AUTH., <http://advisory.mtanyct.info/EEoutage/EEOutageReport.aspx?StationID=All> [<https://perma.cc/47Y8-ELD8>]; see also *MTA Accessible Stations*, *supra* note 18.

23. See Elizabeth F. Emens, *Disability Admin*, MINN. L. REV. (forthcoming 2020); see also ELIZABETH EMENS, *LIFE ADMIN: HOW I LEARNED TO DO LESS, DO BETTER, AND LIVE MORE* (2019) (briefly discussing disability admin).

24. *Service Denied: Accessibility and the New York City Subway System*, NYC COMPTROLLER SCOTT M. STRINGER (July 17, 2018),

areas, the distance between stations with elevators is greater than ten stops — a vast transit desert.²⁵ Interestingly, Avery did not create 12 Zodiac entries for 12 elevators. Only ten of the signs in her elevator Zodiac are even for elevators; perhaps this is because such a meager portion of the subway stations even have elevators.²⁶ Lastly, it is worth adding the observation, which echoes Avery’s portrayals, that where the elevators do work, “they are often tiny, foul-smelling and hard to find, positioned at the far ends of stations, forcing long wheelchair rides along narrow platforms.”²⁷

The law does not cover some of what Avery chose to dramatize in her subway Zodiac entries, for instance, the smells or the single-door elevators. Still, her writing points towards a set of problems that have been the basis of multiple lawsuits, some currently underway. For example, three wheelchair users and five disability rights organizations recently brought a class action suit, *Forsee v. MTA*,²⁸ “to end the MTA’s discriminatory practice of renovating stations without regard to accessibility, and to seek remediation for past violations, so that people with disabilities can use the subway system like everyone else.”²⁹ According to the nonprofit Disability Rights Advocates, a plaintiff in the case, *Forsee* “builds on our victory at one station in *BILS v. MTA* by demonstrating that the MTA’s illegal renovation at the Middletown Road station is a prevalent practice throughout the entire system.”³⁰ And in state court, a broad coalition of disability rights groups sued the MTA and New York City Transit Authority (NYCTA) in 2017, alleging that the inaccessibility of the subway system violated the New York City Human Rights Law.³¹ In June 2019, the court denied the MTA’s motion to dismiss, observing that “there is no license by the MTA, by any other agency to discriminate against any individual by race, minority, ethnicity

https://comptroller.nyc.gov/reports/service-denied-accessibility-and-the-new-york-city-subway-system/?utm_source=Media-All&utm_campaign=5a3ecbb3ff-EMAIL_CAMPAIGN_2017_12_08_COPY_01&utm_medium=email&utm_term=0_7cd514b03e-5a3ecbb3ff-109195173 [<https://perma.cc/W637-2LJT>].

25. See, e.g., *Accessible Highlight Map*, *supra* note 18; see also Barron, *supra* note 21.

26. See *supra* notes 12, 18–19 and accompanying text.

27. Barron, *supra* note 21; see also Avery, *supra* note 12.

28. No. 19 Civ. 4406, 2020 WL 1547468 (S.D.N.Y. Mar. 31, 2020).

29. Complaint at 4, *Forsee*, No. 19 Civ. 4406.

30. *The History of DRA’s Lawsuits against the NYC Metropolitan Transportation Authority*, DISABILITY RIGHTS ADVOCATES., <https://dralegal.org/case/the-history-of-dras-lawsuits-against-the-nyc-metropolitan-transit-authority/> [<https://perma.cc/89R9-N4X3>] (last visited Sept. 13, 2020).

31. Complaint at 4, *Ctr. for Indep. of the Disabled v. Metro. Transp. Auth.*, 125 N.Y.S.3d 697 (App. Div. 2020) (No. 17 Civ. 153765).

or disability,”³² and one year later, in June 2020, a unanimous panel of the Appellate Division of the Supreme Court upheld the lower court’s ruling that the MTA and New York City can be held accountable for “the widespread inaccessibility of the New York City subway system.”³³

New Yorkers can be proud of many aspects of their city, but transit accessibility is not among them.³⁴ According to one recent source, New York City is ranked “the least accessible of the country’s 10 largest metro systems,” lagging “far behind Los Angeles and Washington D.C. which are fully accessible, and Boston and Chicago which are more than 67 percent accessible with concrete plans in place to reach 100 percent.”³⁵ The question looms as to what will happen — in activism, law, or the public imagination — to spur, at long last, the necessary reforms to the New York City transit system.

32. Transcript from Oral Argument at 42, *Ctr. for Indep. of the Disabled*, 125 N.Y.S.3d 697 (No. 17 Civ. 153765).

33. Notice of Entry of Decision and Order on Motions 003 and 004 at 21, *Ctr. for Indep. of the Disabled*, 125 N.Y.S.3d 697 (No. 17 Civ. 153765); see also *Unanimous Appellate Court Upholds Ruling That MTA Is Subject to NYC Human Rights Law and Can Be Held Liable for Discriminating against Subway Riders with Disabilities*, DISABILITY RTS. ADVOCs. (June 8, 2020), <https://dralegal.org/press/unanimous-appellate-court-upholds-ruling-that-mta-is-subject-to-nyc-human-rights-law-and-can-be-held-liable-for-discriminating-against-subway-riders-with-disabilities/> [<https://perma.cc/Z7JN-FF7E>] (“A unanimous panel of four Judges from the Appellate Division of the Supreme Court affirmed a ruling by the lower Court, decided almost exactly a year ago on June 5, 2019, holding that the Metropolitan Transportation Authority (‘MTA’) and the City of New York (‘the City’) can be held accountable under the New York City Human Rights law for the widespread inaccessibility of the New York City subway system. Less than 25% of the New York City Subway’s 472 stations provide stair-free access, meaning the MTA excludes hundreds of thousands of New Yorkers with mobility disabilities each day from this vital system. This decision allows a civil-rights lawsuit filed by a broad coalition of disability rights groups to go forward and guarantees that the MTA is not above the law when it comes to discrimination happening in the system it operates.”).

34. Indeed, participants in the accessible cities symposium heard some examples of accessibility efforts in New York City. See *infra* note 131 and accompanying text.

35. Michelle Cohen, *Judge Rules MTA Must Provide Elevators in All Stations It Renovates*, 6SQFT (Mar. 8, 2019), <https://www.6sqft.com/judge-rules-mta-must-provide-elevators-in-all-stations-it-renovates/> [<https://perma.cc/3LVL-UG4M>].

II. ACCESS FOR ARTISTS: PARK MCARTHUR'S RAMPS

*What is missing in accounts of the world that can be explained and illuminated by disabled artists? What do we perceive in this world that others do not?*³⁶

— Simi Linton & Kevin Gotkin

*My show isn't a show about ramps. It is a show of ramps that surveys the three years since I moved to New York; my interactions with the different art institutions that created portable ramps outside their buildings. It's a show composed of these temporary fixes to structures that are ultimately inaccessible and will remain inaccessible, either because these places don't have the funds to do an overhaul, or because there are architectural incentives to not change their entryways. Or because their inaccessibility is not just about steps.*³⁷

— Park McArthur

One of the most celebrated participants in this extraordinary symposium on accessible cities was not even on the program: the artist Park McArthur seated herself next to me just after my friend and coeditor, the distinguished scholar and international human rights advocate Professor Michael Stein,³⁸ departed to join his panel. I recognized McArthur immediately, having heard her powerful remarks four years earlier at the conference launching the book *Keywords for Disability Studies*.³⁹ McArthur's installation titled *Ramps* forms the next, and most literal, example in this examination of the art of access.

The *Ramps* installation, according to one critic, was “a smart, witty and personally grounded take on institutional critique.”⁴⁰ To compose

36. SIMI LINTON & KEVIN GOTKIN, DISABILITY/ARTS/NYC TASK FORCE, DANT REPORT 2019 (2019), <https://web.archive.org/web/20191221231333/http://disabilityarts.nyc/report>.

37. Jennifer Burris, *Park McArthur Interviewed by Jennifer Burris*, BOMB (Feb. 19, 2014), <https://bombmagazine.org/articles/park-mcarthur/> [<https://perma.cc/C4T2-3H9Q>].

38. I had the good fortune to coedit a volume with Professor Stein. See ELIZABETH F. EMENS & MICHAEL ASHLEY STEIN, DISABILITY AND EQUALITY LAW (2013).

39. RACHEL ADAMS, BENJAMIN REISS & DAVID SERLIN, KEYWORDS FOR DISABILITY STUDIES (2015). For information on the conference, see *Keywords/Key Questions for Disability Studies*, Colum., Ctr. for Study Soc. Difference, <https://www.socialdifference.columbia.edu/events-1/keywords/key-questions-for-disability-studies> [<https://perma.cc/YCT8-XJE8>] (last visited Sept. 13, 2020).

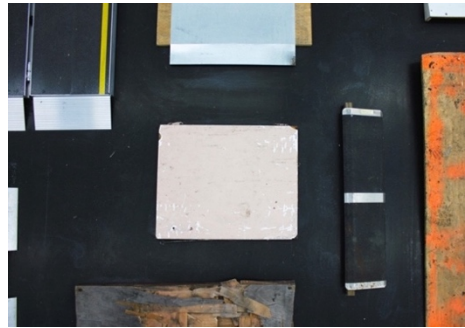
40. John Motley, *New York Artist Park McArthur Explores How Forces beyond Our Control Shape Our Lives in Installation at Yale Union (Review)*, OREGONIAN (Oct. 1, 2014),

the show, “the artist collected 20 wheelchair-accessible ramps from galleries and museums in New York and New England and displayed them on the gallery’s floor.”⁴¹ The press release from the gallery gives a fuller picture, beginning with the simple sentence: “There are ramps on display at ESSEX STREET.”⁴²

https://www.oregonlive.com/art/2014/10/review_park_mcarthur_at_yale_u.html
[<https://perma.cc/Q5XH-7A3S>].

41. *Id.*

42. Press Release, ESSEX STREET, Park McArthur: *Ramps* (Jan. 2014) [hereinafter Press Release, ESSEX STREET], <https://www.essexstreet.biz/files/Park%20McArthur%20Ramps%20PR.pdf> [https://perma.cc/679Y-YJ9E].

Park McArthur, *Ramps*, 2010–2014⁴³Figure 1⁴⁴Figure 2⁴⁵Figure 3⁴⁶

The gallery's press release continues:

These ramps, which provide a way other than stairs for reaching interiors that sit above street level[,] are made of laminated chipboard,

43. Twenty access ramps from various art institutions, 5 aluminum signs, vinyl wall text. Dimensions variable. Photographs courtesy of the artist and Essex Street / Maxwell Graham, New York.

44. Park McArthur, Photograph of *Ramps* installation (2010–2014). Image description: Inside of a room with bright fluorescent lighting and white walls a loose grid of 18 portable ramps cover the majority of the room's black concrete floor. All of the ramps lie flat on the ground except for one, which leans against a wall. On the wall opposite, two parking signs hang high at the wall's top edge. The signs are blue with white borders and hold no lettering or textual information.

45. *Id.* Image description: A view from above of temporary ramps of different sizes and materials in a loose grid on a black concrete floor. One small weather-worn wooden ramp leans against the room's white wall.

46. *Id.* Image description: A view from directly above of temporary ramps of different sizes and materials in a loose grid on a black concrete floor.

aluminum, a cabinet door, plywood, steel, two by fours and other objects intended and not for this purpose. . . . The majority of the ramps are from galleries, exhibition spaces, residencies, schools and studio programs. They were all built or purchased between the years 2010 and 2013, primarily for use by Park McArthur. A sign has been made and distributed to each of the lending organizations to be put on view during the exhibition. . . . While the ramps' presence at ESSEX STREET is unavoidable, their absence from their initially intended sites conforms to the general absence of access at every other cultural and physical institution we attend.⁴⁷

By showing the means of access, the exhibition sets into relief — like a photographic negative — the pervasive lack of access throughout the art world.

Importantly, in *Ramps*, McArthur displays the individual labor involved in her accessing galleries and exhibition spaces to view or install art. As a wheelchair user, McArthur cannot access these spaces seamlessly or automatically, but so often, as *Ramps* portrays, she must make special arrangements for her own entry. In an interview with McArthur in *Bomb Magazine*, the curator and writer Jennifer Burris (JB) asked McArthur (PM) about this element of individual advocacy and labor:

JB: It reminds me of our earlier conversation about your relationship with the different art institutions that built these ad-hoc ramps upon your request and then later loaned them for your current exhibition. On the one hand, after you contacted them, all these different spaces were very receptive to coming up with solutions that provided some means of physical access. But, on the other hand, that accessibility depended on you very explicitly and actively reaching out to them. How can we question this causal dependency of physical access on individualized advocacy?

PM: Particularly because that causal relationship requires you — a person — to have the time and space and energy to advocate for yourself. And of course the show doesn't represent all the places that said: "No, we don't have a ramp." It doesn't show how my participation at other places means getting carried up stairs, an event that requires multiple people's work and organizing efforts.⁴⁸

McArthur's account of the preparation of the exhibition also demonstrates the lack of demand for access and failure of galleries to take initiative around access:

You know, these ramps have been in my studio for a number of months leading up to the exhibition so that I could work out some of the

47. Press Release, ESSEX STREET, *supra* note 42.

48. Burris, *supra* note 37.

installation questions that I had. When I first borrowed them, I asked all of the different organizations to call me if they needed them back for someone to use, and I didn't hear anything from anyone. We can speculate as to why that is and why it remains a basically one-to-one relationship with me.⁴⁹

The fact that no one has asked for the ramps illuminates a broader problem of inaccessibility and the processes undergirding it: "Maybe other people aren't using them because they don't know that these ramps exist, which is one of the reasons why we asked all of the lending institutions to put these immediately recognizable handicap signs in their window."⁵⁰

The problem that individuals have to bring suits to challenge inaccessibility, in many cases, is compounded by the fact that individuals may not even know what access they are entitled to. McArthur laments this feature of the law, as well as the institutional failures to take responsibility for inclusion:⁵¹ "[It] really is a complaint-driven process. Physical access is not something that organizations have taken upon themselves to figure out outside of governmental pressure, largely."⁵² She wishes instead that "institutions made a decision to say that you are valuable to me as someone close to art or as someone part of a culture . . . [not just] because you represent a new consumer base, which is the other reason besides governmental pressure that places become more accessible."⁵³

Numerous scholars and advocates have written about the problem of lack of enforcement of the ADA.⁵⁴ Like most other U.S.

49. *Id.*

50. *Id.*

51. Cf. Susan P. Sturm, *The Architecture of Inclusion: Interdisciplinary Insights on Pursuing Institutional Citizenship*, 30 HARV. J.L. & GENDER 409, 413–17 (2007) (articulating a model of institutional citizenship).

52. Burris, *supra* note 37.

53. *Id.*

54. See, e.g., RUTH COLKER, *THE DISABILITY PENDULUM* 166 (2005) ("[T]he primary problem with ADA Title III has been the enforcement scheme set up by Congress in 1990 when the ADA was adopted. The enforcement scheme — which limits relief to injunctive relief — provides little incentive for plaintiffs and their lawyers to seek legal remedies. Hence, the success of ADA Title III has largely been through voluntary compliance rather than court-ordered relief."); Samuel R. Bagenstos, *The Perversity of Limited Civil Rights Remedies: The Case of "Abusive" ADA Litigation*, 54 UCLA L. REV. 1, 6 (2006) ("The ADA's public accommodations title is massively underenforced, and the limitations on remedies for violations of that title are the most likely culprit."); Adam A. Milani, *Wheelchair Users Who Lack "Standing": Another Procedural Threshold Blocking Enforcement of Titles II and III of the ADA*, 39 WAKE FOREST L. REV. 69, 112–13 (2004) ("[T]he DOJ's Disability Rights Section has only a small cadre of lawyers to bring actions

antidiscrimination statutes, the ADA is a so-called unfunded mandate.⁵⁵ Enforcement falls on the shoulders of individuals who act as private attorneys general. This leads to a dynamic in which some enterprising lawyers may take up the project of enforcement repeatedly — because what individual disabled person has the time and energy to sue the many noncompliant businesses in her daily life? — which has, in turn, led, in some jurisdictions, to courts treating these lawyers harshly as “abusive” litigants.⁵⁶ In particular, this problem appears to have arisen with regard to lawsuits against museums.⁵⁷ The emphasis in these cases is on access for patrons, which has historically received more public attention than access for artists — the focus of McArthur’s work as well as the “DANT report” by Simi Linton and Kevin Gotkin quoted in the first epigraph to this Part.⁵⁸

to enforce not only ADA Title III but ADA Title II and section 504 as well. . . . This demonstrates that, given ‘the enormity of the task of assuring [accessibility for people with disabilities] . . . the role of the Attorney General in the matter [is] minimal, [so] the main generating force must be private suits.’” (alteration in original) (quoting *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 211 (1972)).

55. See, e.g., Julie A. Roin, *Reconceptualizing Unfunded Mandates and Other Regulations*, 93 NW. U. L. REV. 351, 363–70 (1999).

56. See, e.g., Bagenstos, *supra* note 54, at 15 (“Serial litigation, without presuit notice, is . . . a direct response to the remedial limitations imposed by Congress and the Supreme Court on ADA public accommodations cases. Serial litigation will occur even when the plaintiff is challenging conduct that actually violates the ADA and even when the plaintiff’s lawyer wants nothing more than to eliminate the violation and to get paid for her successful efforts. . . . Suits by private counsel are necessary to achieve compliance with the statute’s accessibility requirements, and under the current remedial scheme serial litigation may be the only cost-effective way for private counsel to bring suit.”).

57. See, e.g., Eileen Kinsella, *More Than 75 New York Galleries Are Slammed with Lawsuits for Allegedly Violating the Americans with Disabilities Act*, ARTNET NEWS (Jan. 29, 2019), <https://news.artnet.com/art-world/dozens-of-new-york-galleries-slammed-with-lawsuits-for-ada-compliance-on-websites-1450276> [https://perma.cc/W6FT-5CFV] (last visited Aug. 8, 2020) (“A single plaintiff, identified as Deshawn Dawson, a legally blind person living in Brooklyn, has filed at least 37 lawsuits against a wide range of New York fine art, rare book, and antiques dealers in US District Court for the Southern District of New York A different plaintiff, Henry Tucker, also filed more than 80 similarly worded suits this past November, including a number against New York galleries. Both Tucker and Dawson are represented by the same attorneys, Joseph Mizrahi and Jeffrey Gottlieb.”); see also *Costello v. Flatman, LLC*, 558 F. App’x 59, 59 (2d Cir. 2014).

58. See, e.g., LINTON & GOTKIN, *supra* note 36, at 10 (“Historically, funding for disability-specific arts initiatives has been concentrated on access for audiences. Funding audience access is not the same as funding the arts, artists, and organizations involved in creating and advancing disability artistry. Access to the arts provides opportunities for art to have an impact on disabled people, but DANT’s work is focused on how disabled people can have an impact on art and all that art does. We are not pitting one against the other. Rather, we are pointing out that support for artists and artistry is too often forgotten.”) DANT stands for Disability/Arts/NYC Task Force. See *id.* at 3.

In contrast to some courts' concern with "abusive" ADA litigants,⁵⁹ the aggression on display at McArthur's *Ramps* installation seemed to come, however, from the patrons. In McArthur's words,

[t]here are still parts of the exhibition's opening that I haven't processed, however. Acts of aggression that I witnessed: people jumping on the ramps rather than just stepping on them to go from one place to another. I understand that participatory art exists as a phenomenon in contemporary art, and perhaps my installation could have looked like that to someone — objects to touch — but I hadn't anticipated the desire or necessity to walk on the ramps in the ways that they were walked on.⁶⁰

The potency of McArthur's work extends far beyond the issue of physical access for the paradigmatic disabled person (the wheelchair user).⁶¹ Instead, she intends this display of the material artifacts of lack of access, and the individually generated means of access, to represent a much wider array of access issues:

A ramp is the bare minimum: it just gets someone into a place. What about language interpretation? What about childcare? What about transportation or assistance? What about Skype or video technologies, closed captioning, and visual descriptions? How to think about these practices of access in a way that doesn't limit advocacy to the implementation of a ramp or elevator?⁶²

Even amidst McArthur's expansive vision of accessibility, portrayed vividly through her display of her personal ramps, the exhibition was one that McArthur herself could not fully access. As she described in an interview,

59. See Bagenstos, *supra* note 54 and accompanying text.

60. Burris, *supra* note 37. McArthur continues to explain her response to these aggressive intrusions into the installation:

I can't help but understand that reaction within the context of the show. Because, for me, the installation felt very imposing: these ramps are apprehending you rather than the other way around, a reversal in the artwork that didn't seem to happen for a lot of other people. I was surprised that people seemed to feel like it was a field into which you could insert yourself, rather than it putting itself onto you.

Id.

61. McArthur acknowledges a debt to Marta Russell's classic book *Beyond Ramps: Disability at the End of the Social Contract*, which contains, inter alia, the memorable line, "to move beyond ramps, we must first agree that ramps are indisputably necessary." MARTA RUSSELL, BEYOND RAMPS: DISABILITY AT THE END OF THE SOCIAL CONTRACT 233 (1998). For McArthur's reflections on Russell's book, see Burris, *supra* note 37.

62. Burris, *supra* note 37.

I hesitate to think that there is a direct correlation there, that a non-disabled person's temporary experience can be equated to the strictures of a disabled person's experience. I certainly wasn't interested in creating "aha" moments for people who don't think about their bodies in space, potentially, as much as disabled people do. Separate from that, if you are walking, you can choose to walk over and in-between ramps that are positioned in a grid on the floor — there are pathways of a sort. The confined space at the opening only meant that it was harder for people who are blind or for people who use wheelchairs, for example, to get around. And this goes for conditions of apprehension as well: if you use a wheelchair or a scooter or a walker, you are never going to have an internal view of the installation. *There are photographs of the ramps from a perspective that I have never seen personally.* Which is to say, also, that no one experiences the installation from the top-down view that serves very well to document the sculpture itself.⁶³

McArthur is always thinking and casting events in a new light. Even as she offers one of her most poignant lines — “[t]here are photographs of the ramps from a perspective that I have never seen personally”⁶⁴ — in a passage about nondisabled people's forced entry into parts of the installation where they were not welcome — McArthur reframes the critique. She offers, in the final line of this passage, an analysis that brings us all together, aligning us, in our lack of total access to anything: “[N]o one experiences the installation from the top-down view that serves very well to document the sculpture itself.”⁶⁵ We are all limited in what we see and do, not just those who qualify as “disabled” under some legal or social definition.

III. ACCESS FOR ART PATRONS: SHANNON FINNEGAN'S *ANTI-STAIRS CLUB LOUNGE AT THE VESSEL*

This iteration of Anti-Stairs Club Lounge gathered fifty disabled and non-disabled people to protest Vessel . . . at Hudson Yards. Vessel is a building-sized, basket-like structure made of 154 interconnected stairways created by designer Thomas Heatherwick. While Vessel does have an elevator, the elevator is not an equitable means to experience the structure. From its inception, Vessel has centered the experience of climbing stairs and imagines a public without people unable, unwilling, or uninterested in climbing stairs

63. *Id.* (emphasis added).

64. *Id.*

65. *Id.*

*The lounge included seating, cushions, snacks, signage, and custom florescent-orange beanies worn by participants that all signed a pledge stating: As long as I live, I will not go up a single step of the Vessel.*⁶⁶

— Shannon Finnegan, *Anti-Stairs Club Lounge at the Vessel*

On December 23, 2019, the U.S. Attorney’s Office for the Southern District of New York (SDNY) and the Department of Justice (DOJ) Civil Rights Division announced a settlement with the developers Related Companies L.P. and ERY Vessel LLC to “increase the . . . accessibility for individuals with disabilities” of the *Vessel*, an architectural spectacle that had opened to the public in Hudson Yards on March 15 of that year.⁶⁷ The previous sentence seems a fitting way to begin this Part, when writing for a legal audience. And yet information about any impact of the settlement is scant — and not only because COVID-19 has led to the closure of the *Vessel* at present. Though I will return to the settlement, the central focus of this discussion is an event that took place outside the *Vessel* and outside of legal circles: Shannon Finnegan’s protest of the *Vessel*, called the *Anti-Stairs Club Lounge*.

66. Shannon Finnegan, *Anti-Stairs Club Lounge at “Vessel”* [hereinafter Finnegan, *Vessel*], <https://shannonfinnegan.com/anti-stairs-club-lounge-at-the-vessel> [<https://perma.cc/AAP2-3879>] (last visited Sept. 13, 2020).

67. Press Release, Dep’t of Just., U.S. Att’y’s Off. for the S. Dist. of N.Y., Manhattan U.S. Attorney Announces Agreement with Related Companies to Increase Accessibility of the Vessel in Hudson Yards (Dec. 23, 2019) [hereinafter Press Release, Manhattan U.S. Attorney Announces], <https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-announces-agreement-related-companies-increase-accessibility> [<https://perma.cc/PT8F-G2LT>].

Shannon Finnegan, *Anti-Stairs Club Lounge at the Vessel, 2019*

Figure 468



Figure 569



The story begins shortly before Finnegan's protest. As soon as the *Vessel* opened on March 15, artists, writers, and activists began to criticize its inaccessibility.⁷⁰ Here is one description of the *Vessel* and its problems published at the time by Emily Sara:

Vessel is a honeycomb-like building comprised of 154 stairways, created by designer Thomas Heatherwick and opened to the public in New York City's Hudson Yards in March 2019. Heatherwick said he "designed the Escher-like lattice of staircases to encourage public interaction and bring people together, rather than creating an object purely to be looked at." The irony is that one fifth of the population is disabled and will be doing exactly that — looking from a distance, unable to interact with the artwork.⁷¹

Another writer, Kevin Gotkin, likewise critiqued the portrayals of the *Vessel* as "interactive," arguing that a more apt description would be "anti-active," since it "limit[s], by design, anyone whose body doesn't

68. Finnegan, *Vessel*, *supra* note 66 (Maria Baranova, Photograph of *Anti-Stairs Club Lounge at the Vessel*. Image description: A close-up of Christine signing a pledge: "As long as I live, I will not go up a single step of the Vessel." The pledge on colorful paper, riso-printed with blue hand-drawn text, and has a crossed-out-stairs symbol at the top).

69. *Id.* (Maria Baranova, Photograph of *Anti-Stairs Club Lounge at the Vessel*. Image description: About 40 people posed in front of the Vessel sporting bright orange, *Anti-Stairs Club Lounge* beanies and holding *Anti-Stairs Club Lounge* signs).

70. See, e.g., Karrie Jacobs, *The Antisocial Stairway of Hudson Yards*, CURBED N.Y. (Mar. 29, 2019, 8:59 AM), <https://ny.curbed.com/2019/3/29/18285507/hudson-yards-vessel-thomas-heatherwick-tim-es-square-steps> [https://perma.cc/Q3HK-3F4J].

71. Emily Sara, *Fighting the Art World's Ableism*, HYPERALLERGIC (Aug. 2, 2019), <https://hyperallergic.com/510439/fighting-the-art-worlds-ableism/> [https://perma.cc/9CLS-URZ2].

easily climb stairs.”⁷² According to Gotkin, “*Vessel* is only interactive if you imagine one charmed visitor-figure: the young, bipedal, non-suicidal, stroller-less, luggage-less climber who cultivates a group of similarly embodied climbers for the trek.”⁷³ Gotkin’s title captures the refrain of the criticism of what the *Vessel* represents and enacts: “Stair Worship.”⁷⁴

Gotkin anticipated the protests that ensued. After archly observing the temptation to describe the *Vessel* as “empty,” true to “its etymological roots,” instead he perceives the structure as “quite full — with the imaginations that constitute ableism and with fantasies about who can and will inhabit public space.”⁷⁵ “Even easier,” he says, is “imagin[ing] that the structure will move New Yorkers to protest, filled with an array of vibrant cultural actors who take disability seriously.”⁷⁶ And protest they did.

On April 6, 2019, less than a month after the *Vessel* opened its doors to ticketholders, Shannon Finnegan led the protest described in the epigraph. As the passage quoted from their website explains, Finnegan required those who participated in the *Anti-Stairs Club Lounge* to sign an agreement never to “go up a single step of the *Vessel*”⁷⁷ (Figure 4).

This was not Finnegan’s first Anti-Stairs Club Lounge; in 2017, Finnegan had created a similar installation at the Wassaic Project’s exhibition space, Maxon Mills.⁷⁸ The Wassaic Project’s Lounge differed notably from the *Vessel*’s Lounge because the gallery commissioned the

72. Kevin Gotkin, *Stair Worship: Heatherwick’s Vessel*, AVERY REV. (Sept. 2018), <https://www.averyreview.com/issues/33/stair-worship> [<https://perma.cc/VH7M-HFQ7>].

73. *Id.*

74. *Id.* He elaborates on this idea with these words:

It’s tempting to cast *Vessel* close to its etymological roots: that which is, in the end, empty. It’s easy to refuse the claim that the vessel moves things, moving New Yorkers without moving itself. But in fact *Vessel* is quite full — with the imaginations that constitute ableism and with fantasies about who can and will inhabit public space.

Id.

75. *Id.*

76. *Id.*

77. Finnegan, *Vessel*, *supra* note 66. Whether that agreement would be enforceable would make a nice contract law hypothetical, since the student would need to identify that there likely is consideration in the form of mutually inducing promises and that, while specific performance would not be ordered in the event of breach of a personal services contract, damages could likely be sought.

78. Shannon Finnegan, *Anti-Stairs Club Lounge at Wassaic Project* [hereinafter Finnegan, *Wassaic*], <https://shannonfinnegan.com/antistairs-club-lounge-wassaic-project> [<https://perma.cc/T6JG-FQ2X>] (last visited Sept. 13, 2020).

earlier Lounge as a two-year protest installation on the ground floor of the seven-floor space.⁷⁹ The Wassaic Project's *Anti-Stairs Club Lounge* comprised "seating, reading materials, light refreshments, plants, and a charging station[]"⁸⁰ for the exclusive use of "visitors who cannot or choose not to go upstairs."⁸¹ Finnegan explained the purpose of the *Lounge* at the Wassaic Project in these words:

For visitors who can't go upstairs, [the *Lounge*] will help mitigate a practical problem about the inaccessibility of Maxon Mills: those who cannot or choose not to go upstairs sometimes have to wait on the ground floor while their friends or family tour the upstairs. I want to make their experience of the exhibition richer and more fun, adding to their stay on the ground floor. My intent is that the experience also operates on a metaphorical level saying to those visitors, "You are welcome and valued here."⁸²

This purpose of Finnegan's work dovetails with the ideal Park McArthur articulated: of institutions "say[ing] that you are valuable to me as someone close to art or as someone part of a culture . . . [not just] because you represent a new consumer base."⁸³

Finnegan is explicit about their primary audience in these protest-installations: "Anti-Stairs Club Lounge is a project made with a disabled viewer in mind. In this case, it is someone with a mobility-related disability."⁸⁴ They also thought about the impact on nondisabled visitors to the building (and anyone else who chooses to go upstairs): Finnegan made the *Lounge* available only to visitors who do not go to the upper floors of the exhibition so "that the experience of missing out on part of the exhibition prompts [visitors] to think about access more generally."⁸⁵ Prior work by Finnegan includes "'Museum Benches' (2018), benches that bear inscriptions like THIS EXHIBITION HAS ASKED ME TO STAND FOR TOO LONG. SIT IF YOU AGREE."⁸⁶

79. *See id.*

80. *Id.*

81. *Id.*

82. Lucy Commoner, *Shannon Finnegan*, WASSAIC PROJECT (May 2018), <https://www.wassaicproject.org/artists/artist-profiles/list/shannon-finnegan> [<https://perma.cc/6W34-QUE3>].

83. Burris, *supra* note 37.

84. Commoner, *supra* note 82.

85. *Id.*

86. *Shannon Finnegan and Aimi Hamraie on Accessibility as a Shared Responsibility*, ART IN AM. (Dec. 17, 2019, at 12:57 PM),

Finnegan's *Anti-Stairs Club Lounge* at the *Vessel* in 2019 followed a model similar to the Wassaic Project incarnation, although the protest at the *Vessel* was held outside the building, rather than being commissioned or welcomed by the institution's owners. To help create collective membership and visibility for this outdoor protest, Finnegan made "bright orange beanies with crossed-out stairs symbols on them, designating people in the club"⁸⁷ (Figure 5). They also turned textual critique into protest signage: "To mark the lounge, I created a newspaper-like version of Kevin Gotkin's essay 'Stair Worship: Heatherwick's Vessel' When you opened the paper up to read it, the exterior functioned as a sign that said 'Anti-Stairs Club Lounge.'"⁸⁸

Figure 6⁸⁹



Emily Sara used the occasion of the *Vessel's* opening and Finnegan's protest to pen a broader critique of the "Art World's Ableism."⁹⁰ She presents her challenge as an "open letter" from "A Crip in the Arts."⁹¹

This is an open letter to say that we, the art world, are not sufficiently supporting the neurodiverse and disabled communities. As such, we are inadvertently reinforcing the ableism that pervades American society. Ableism, if you are unfamiliar with the term, is a set of beliefs that devalues people with physical, intellectual, or psychiatric disabilities. Ableism does not always involve malicious intent; one of the most common manifestations is when individuals who are neurodiverse or

<https://www.artnews.com/art-in-america/interviews/shannon-finnegan-aimi-hamraie-access-art-architecture-1202671288/> [<https://perma.cc/K6JC-CXNL>].

87. *Id.*

88. *Id.*

89. Finnegan, *Vessel*, *supra* note 66 (Maria Baranova, Photograph of *Anti-Stairs Club Lounge* at the *Vessel*. Image description: Nimo and Sam read newspapers. The exterior spread functions as signage that says "Anti-Stairs Club Lounge" in a stair-inspired font).

90. See Sara, *supra* note 71.

91. See *id.*

disabled are simply not acknowledged. . . . Building monuments to stairs in the year 2019 falls within the “ableist” category.⁹²

Notably, Sarah uses the first-person plural — “we” — to include herself, or the speaker of the letter (if that is not intended to be her), among those engaging in ableism in the art world.⁹³

A recurring theme in these critiques of the *Vessel* is the inadequacy of the law’s response. Sara writes, for instance, “[d]espite the enactment of the Americans with Disabilities Act (ADA) 29 years ago, neurodiverse and disabled communities continue to face collective discrimination from failures to accommodate in access, transportation, employment, education, and many other arenas. Unfortunately, the art world is no exception.”⁹⁴ Elsewhere she writes, “I am therefore calling on galleries, curators, museums, institutions of higher education, artists, and other art institutions: welcoming the neurodiverse and disabled is long overdue. Having an ADA compliant space is the bare minimum for inclusion.”⁹⁵ Gotkin presents the law as narrow, as he suggests that the *Vessel* may be taking steps to fall within its technical parameters: “Heatherwick seems to treat the accessibility of *Vessel* with the woefully limited ruler of the ADA. There will be a glass elevator to transport visitors to the top, checking the box of the regulations but not honoring the spirit of the law.”⁹⁶

Apparently, DOJ Civil Rights and the U.S. Attorney’s Office (USAO) did not believe that the *Vessel* was even meeting that “woefully limited ruler of the ADA.”⁹⁷ On December 23, 2019, these offices issued a press release documenting concerns about the inaccessibility of this “public landmark” which begins, “[t]he United States contends that as constructed, the *Vessel*, a multi-story, open air structure composed of eighty (80) platforms connected by stairways, is inaccessible to individuals with disabilities in violation of the Americans with Disabilities Act of 1990.”⁹⁸ The press release contrasts the developers’ account of the *Vessel* — as “the centerpiece of the new Hudson Yards development in Manhattan, and as a ‘public landmark’ that ‘will lift the public up, offering a multitude of ways to engage with and experience

92. *Id.* (emphasis added).

93. *See id.*

94. *Id.*

95. *Id.*

96. Gotkin, *supra* note 72.

97. *Id.*

98. Press Release, Manhattan U.S. Attorney Announces, *supra* note 67.

New York, Hudson Yards and each other” — with its reality.⁹⁹ The DOJ and the USAO contend instead that “the Vessel’s current design allows individuals with disabilities to access at most only three (3) of the 80 platforms, all on one side of the structure, as the sole elevator reaches three platforms and visitors must otherwise traverse stairs to move among the platforms.”¹⁰⁰ Moreover, “[d]ue to the high demand for the elevator, [the developer] has at times directed that the elevator bypass the platforms at levels 5 and 7, thereby rendering only one platform (at level 8) accessible to individuals with disabilities.”¹⁰¹

Both the U.S. Attorney for the SDNY and an Assistant Attorney General (AAG) with DOJ Civil Rights offered statements about the importance of this settlement for “increasing access” for people with disabilities.¹⁰² The AAG specifically referenced the upcoming 30th anniversary of the ADA.¹⁰³ The settlement agreement required the developers of the *Vessel* to make short-term and long-term changes, including the following:

[T]o design, construct, install, and operate a platform lift mechanism that will allow individuals with disabilities to traverse the stairways and platforms at the top levels of the Vessel so as to enjoy 360-degree views, providing access to the most traveled areas of the Vessel that are also currently inaccessible to individuals with disabilities.¹⁰⁴

Moreover, the developers must “ensure that the elevator stops at levels 5 and 7 upon request, to operate the elevator on a pre-set, timed schedule, and to modify the Vessel’s ticketing reservation options to allow individuals with disabilities to reserve priority access to the elevator.”¹⁰⁵

Whether even the first stage of changes has been made is unclear and impossible to check at present, due to the *Vessel*’s closure during the

99. *Id.*

100. *Id.*

101. *Id.*

102. *See id.* (“Manhattan U.S. Attorney Geoffrey S. Berman said: ‘We are pleased that Related has designed an innovative solution to increase accessibility to the Vessel. Related has agreed to commit substantial resources to install a platform lift that will allow individuals with disabilities to enjoy 360-degree views from the Vessel’s top level.’ Assistant Attorney General Eric Dreiband said: ‘As we approach the ADA’s 30th Anniversary, it is vital that individuals with disabilities have access to major new tourist attractions in our cities. I am pleased that Related is taking steps to increase accessibility of the Vessel.’”).

103. *See id.*

104. *Id.*

105. *Id.*

COVID-19 pandemic.¹⁰⁶ What is clear is that Finnegan and others were hoping for something broader. In a conversation published in *Art in America* between Finnegan and Professor Aimi Hamraie, Hamraie is quoted as saying

[t]here’s a longer history of accessibility laws being applied and enforced in public spaces than in private spaces. In private spaces — like Hudson Yards, as well as many art spaces — there’s a lag in enforcement: it takes something like a lawsuit. So I’m not surprised that the Vessel exists. There is an elevator, so there’s this idea that accessibility is an add-on at the end, even though the monument is about valorizing strength and climbing — the justification being, “It’s OK because there’s an elevator.”¹⁰⁷

Hamraie goes further in critiquing the limits of law, arguing instead for disability justice:¹⁰⁸

106. By one anecdotal account, the *Vessel* does now have a sign indicating the elevator is only for people with disabilities, leaving at least some patrons confused as to whom that applies, just as Gotkin anticipated.

There will be a glass elevator to transport visitors to the top, checking the box of the regulations but not honoring the spirit of the law. *Bloomberg* and several other news outlets reported in the fall of 2016 that only physically disabled visitors will be permitted to use it. Though disability determinations besiege federal and state bureaucracies, Heatherwick imagines these will be made at the entrance to the elevator, leaving visitors with strollers, luggage, and nonapparent disabilities without much certainty about their access to the structure.

Gotkin, *supra* note 72 (citations omitted).

107. Shannon Finnegan and Aimi Hamraie on *Accessibility as a Shared Responsibility*, *supra* note 86.

108. See, e.g., ZOIE SHEETS, *Disability Justice*, in *DISABILITY IN AMERICAN LIFE: AN ENCYCLOPEDIA OF CONCEPTS, POLICIES, AND CONTROVERSIES* 195 (Tamar Heller et al. eds., 2019) (“Disability justice is an intersectional framework of analysis that brings together marginalized people with disabilities and their allies and works as a vehicle of systemic change. This movement aims to identify and change the root causes of injustice for people with disabilities — namely, the systems that do not prioritize or fail to consider the wholeness of those with disabilities.”); Aimi Hamraie, *Mapping Access: Digital Humanities, Disability Justice, and Sociospatial Practice*, 70 *AM. Q.* 455, 459 (2018) (“The disability justice movement, which is led by disabled people of color and queer disabled people, shifts the conversation about access from compliance to principles such as ‘intersectionality,’ ‘leadership of the most impacted,’ ‘anti-capitalist politic,’ ‘cross-disability solidarity,’ ‘interdependence,’ ‘collective access,’ and ‘collective liberation.’” (quoting *SKIN, TOOTH, AND BONE — THE BASIS OF MOVEMENT IS OUR PEOPLE* (2016)). Disability justice overlaps with the framework of “disability solidarity” endorsed by Simi Linton and Kevin Gotkin among others:

Ramps and elevator access for wheelchair users clearly continue to be abysmal in most places. But for so long, “accessibility” has been used to refer exclusively to wheelchair access. If you try to talk to somebody about any access need that’s different from that, responses can be catastrophic. People don’t always think that different needs — strobe warnings, peanut-free environments — are equally valid. That’s why the Disability Justice movement is so important — this cross-disability campaign makes an effort to include people with nonapparent disabilities and chronic illnesses, and to think about how disability intersects with class. That’s the kind of analysis I think we need.¹⁰⁹

Finnegan’s rejection of narrow compromise or legal enforcement is even more striking. Their *Anti-Stairs Club Lounge* set forth the following demand: “The protest called for a permanent Anti-Stairs Club Lounge with a budget of \$150 million dollars (equivalent to the production budget for *Vessel*).”¹¹⁰ In other words, Finnegan sought a do-over of the *Vessel*, but oriented towards disabled persons.

By contrast to these far-reaching claims, Sara, in her open letter from “A Crip in the Arts,” presents specific resources and recommendations to help those in the art world advance accessibility,¹¹¹ and in their report on

Disability Solidarity — a term coined by activist TL Lewis of HEARD (Helping Educate to Advance the Rights of the Deaf) and The Harriet Tubman Collective — [is used] to analyze the way radical and leftist movements fail to consider the multiple axes of oppression experienced by black d/Deaf** and disabled people. Disability solidarity builds upon Kimberlé Crenshaw’s intersectionality, a term that describes how many social ills are “overlapping” and as such create “multiple levels of social injustice.”

LINTON & GOTKIN, *supra* note 36, at 7.

109. Shannon Finnegan and Aimi Hamraie on *Accessibility as a Shared Responsibility*, *supra* note 86 (quoting Hamraie).

110. Finnegan, *Vessel*, *supra* note 66.

111. Specifically, she writes the following:

Carolyn Lazard’s pamphlet *Accessibility in the Arts: A Promise and a Practice*, commissioned by Recess in 2018, contains practical guidance for “small-scale arts nonprofits and the potentially expansive publics these organizations serve.” *Accessibility in the Arts* breaks down specific accommodations, as well as how to list access information appropriately, and how to budget for inclusive spaces. Even modest shifts in practice could make an enormous difference

To those in public organizations, make sure that you hire a disability consultant to review your space and that you regularly engage with your disabled community, not just at your organization’s inception but as long as it exists. If

New York City disability arts equity, Linton and Gotkin set out the need for “deep work” as well as “incremental steps” that can make arts in New York City more inclusive.¹¹² Very recently, Carolyn Lazard published a document framed as a “guide” for arts organizations, large and small, with both practical and innovative ideas, also built on the approach of disability justice.¹¹³ What these activists and writers have in common with Finnegan, though, is their push for a vision of access that goes beyond mere compliance.¹¹⁴

you are a small organization, reviewing and adopting suggestions from Lazard’s *Accessibility in the Arts* is an excellent place to start.

The following is a list, by no means complete, to begin with: All spaces should have combinations of on-grade entrances, ample seating with support, ASL interpreters, communication access real-time translation (CART), all-gender restrooms, assisted listening devices, 1:12 ramps, railings, grab bars, foot stools, temperature control, quiet spaces, closed captions, and a staff educated about service animal etiquette. And many, many other accommodations are needed.

Sara, *supra* note 71.

112. See LINTON & GOTKIN, *supra* note 36, at 10.

113. See generally Carolyn Lazard, *Accessibility in the Arts: A Promise and a Practice*, PROMISEANDPRACTICE.ART (2019), <https://promiseandpractice.art/> [<https://perma.cc/6Q55-VNPU>]. Lazard explains disability justice as follows:

Developed by queer and trans activists of color in the Bay area, Disability Justice (DJ) is the second wave of the disability rights movement, transforming it from a single issue approach to an intersectional, multisystemic way of looking at the world. Within this framework, disability is defined as an economic, cultural, and/or social exclusion based on a physical, psychological, sensory, or cognitive difference. Disability Justice movements understand disability to be unevenly distributed, primarily affecting black and indigenous communities, queer and trans communities, and low income communities. Disability is structurally reinforced by ableism, a system rooted in the supremacy of non-disabled people and the disenfranchisement of disabled people through the denial of access. Accessibility is the primary tool that organizations can engage to dismantle ableism and create a more inclusive space; it defines the degree to which all people can engage with certain resources and participate in cultural, social, political, and economic spheres. . . . *To commit to disability justice is to redefine the terms of subjecthood. It’s to undo the rampant individualism that is a fiction for both disabled and nondisabled people: everyone has needs.*

Id. at 6–7, 9 (emphasis added).

114. See generally *id.* Lazard also frames the limits of the ADA, which does not cover businesses and organizations with fewer than 15 employees, in terms of the possibilities for small organizations to do better and do more than mere compliance. See *id.* at 8 (“A smaller staff can lead to less bureaucracy and closer contact with an institution’s public. The person introducing the event at a small-scale arts nonprofit might also be the person

The frequency of a compliance model for disability — compared, in some circles, to a push to diversity and integration in other contexts — has been the subject of important work by Lauren Shallish, among others.¹¹⁵ Linton and Gotkin likewise push to move “beyond compliance” specifically in the realm of disability arts, observing that, when an organization does more than “check off items on a list” and instead works “to change the culture of an institution to a more inclusive and equitable one,” these changes “take creativity, expertise, and resources — which are not remedies that can be legislated.”¹¹⁶ Lazard also frames the limits of the ADA, which does not cover businesses and organizations with fewer than 15 employees, in terms of the possibilities for small arts organizations to do better and do more than mere compliance.¹¹⁷ These artists and activists all highlight the inadequacy of the law and attempt

who set out the seats earlier in the evening. These systems of organization allow for more flexibility and change within an organization. Programs and exhibitions tend to bend to the frameworks presented by large arts institutions, whereas smaller arts institutions can be redefined with each project they engage.”).

115. See Lauren Shallish, *Just How Much Diversity Will the Law Permit?: The Americans with Disabilities Act, Diversity, and Disability in Higher Education*, 35 *DISABILITY STUD.* Q. 8, 8 (2015), <https://dsq-sds.org/article/view/4942/4059> [<https://perma.cc/LF98-JNHE>] (“For other classes based on race or gender, civil rights law is one part of a larger effort to address inequality yet much of the literature and training around disability focuses on legal compliance. If compliance ‘is the singular goal of institutions, that aim itself suggests that students with disabilities have a marginalized status, that meeting the legal obligations is the goal, and there is no other guide for action’”) (quoting Sheryl Burgstahler & Rebecca Cory, *From Accommodation to Universal Design*, in *DISABILITY & THE POLITICS OF EDUCATION: AN INTERNATIONAL READER* 561, 564 (Susan Gabel & Scot Danforth eds., 2008)); see also Laura Sherbin & Julia Taylor Kennedy, *The Case for Improving Work for People with Disabilities Goes Way beyond Compliance*, *HARV. BUS. REV.* (Dec. 27, 2017), <https://hbr.org/2017/12/the-case-for-improving-work-for-people-with-disabilities-goes-way-beyond-compliance> [<https://perma.cc/4GR6-6RAX>] (“For too long, companies have viewed employees with disabilities through the lens of compliance and accommodation. There’s no better time to start to look at disability through a different lens: of inclusion and infinite possibility.”).

116. LINTON & GOTKIN, *supra* note 36, at 13.

117. See Lazard, *supra* note 113, at 8 (“And yet the very definition of ‘small-scale’ that allows organizations to evade ADA compliance can be seen as a strength, as small-scale arts organizations are perhaps more capable of meeting the needs of their audiences than larger institutions. Big museums, for example, might have access to more financial resources, but are often plagued by bureaucracy and inaccessible leadership. A smaller staff can lead to less bureaucracy and closer contact with an institution’s public. The person introducing the event at a small-scale arts nonprofit might also be the person who set out the seats earlier in the evening. These systems of organization allow for more flexibility and change within an organization. Programs and exhibitions tend to bend to the frameworks presented by large arts institutions, whereas smaller arts institutions can be redefined with each project they engage.”).

something bolder. Sara ends her list of proposed access guidelines with the words, “[i]f you decide against these, you are, simply put, saying that we are not welcome.”¹¹⁸

Once the settlement with the *Vessel* was announced, Finnegan offered a mixed appraisal. In an email published in *Hyperallergic*, they wrote: “I’m highly skeptical of any attempts to make the *Vessel* accessible because inaccessibility is its organizing principle . . . [b]ut it is gratifying to see this small acknowledgment of its access failures.”¹¹⁹

* * *

As I write this, debates rage about the recent decision of the American Museum of Natural History (AMNH) to remove the statue of President Theodore Roosevelt on horseback, flanked on each side by a partially clad man who looks indigenous or African, from the top of the Museum’s front entrance steps. Two days ago, protesters arrived bearing MAGA hats and “Keep America Great” signs, and offering their commentary on current events:

A protester in her 70s who gave her name as Sharon, said, “I don’t see the statue as racist, and that word is overused and dramatized today.”

She said the debate over the statue, “certainly has nothing to do with that police situation in Minneapolis where a man was murdered.”¹²⁰

As the article notes, the woman was referencing George Floyd, who was killed by the police one month earlier.¹²¹

In his powerful article about the *Vessel* “Stair Worship,” discussed earlier, Kevin Gotkin begins by discussing a report released by the New York City Mayoral Advisory Commission on City Art, Monuments, and Markers in January 2018,¹²² which deliberated on the Roosevelt statue at the AMNH. The Commission’s report, as Gotkin observes, acknowledges

118. Sara, *supra* note 71.

119. Hakim Bishara, *Vessel Adds Elevator for People with Disabilities after Deal with US Attorney of New York*, *HYPERALLERGIC* (Dec. 26, 2019), <https://hyperallergic.com/534886/vessel-adds-elevator-for-people-with-disabilities-after-deal-with-us-attorney-of-new-york/> [<https://perma.cc/XFX6-6LKJ>].

120. Zachary Small, *Defenders of Roosevelt Statue Converge on Natural History Museum*, *N.Y. TIMES* (July 1, 2020), <https://www.nytimes.com/2020/06/28/arts/design/roosevelt-statue-defenders-natural-history.html> [<https://perma.cc/QPH6-WX6M>].

121. *See id.*

122. *See generally* MAYORAL ADVISORY COMM’N ON CITY ART, MONUMENTS, & MARKERS, REPORT TO THE CITY OF NEW YORK (2018), <https://www1.nyc.gov/assets/monuments/downloads/pdf/mac-monuments-report.pdf>, [<https://perma.cc/FA7H-5BZQ>].

that “Roosevelt was an avowed eugenicist and that the Museum hosted the second and third International Eugenics Congress conferences in 1921 and 1932.”¹²³ The report also recognizes the power structure of the statue: “[d]escribing Roosevelt, on horseback, towering over two men who walk at his stirrups, it notes that ‘height is power in public art.’”¹²⁴

Despite its concern with eugenics and dominance, however, “the report says nothing about the fact that the monument is on a set of stairs.”¹²⁵ Gotkin continues:

It says nothing about the other monument to the other President Roosevelt, also made inaccessible by a set of stairs. There is a telling absence of public concern about the fact that the Four Freedoms Park that points like an arrow to FDR’s bronze bust in New York City — the only memorial to the wheelchair-using president in his home state — is inaccessible to wheelchair users and others who used the same kinds of mobility aids he did at various points during his presidency.¹²⁶

The Commission’s report recounts the deliberations and conclusions about the Roosevelt sculpture in front of the AMNH.¹²⁷ Or rather, the report presents the Commission’s lack of conclusions, since the “Commission was unable to reach [a] consensus,” offering instead three possible paths forward.¹²⁸ The AMNH has now announced the removal of the statue, and protests ensue, but the lack of mention of the stairs persists.

CONCLUSION

The fictional passage that launched this Essay compared two imagined cities — one accessible and one inaccessible.¹²⁹ Here is that passage:

Imagine two towns: Accessible City (A-City, for short) and Inaccessible City (I-City). Janet, an attractive young lawyer and triple amputee who uses a wheelchair, lives in A-City, where she meets John, a nondisabled librarian, and they begin dating. In A-City, where everything is accessible, John and Janet can go wherever they please together — parks, museums, restaurants, bars. They go dancing and see movies; they take public transportation to the botanical gardens and the zoo. Most private buildings are accessible, at least on the ground floor, so

123. Gotkin, *supra* note 72.

124. *Id.*

125. *Id.*

126. *Id.* (citations omitted).

127. See MAYORAL ADVISORY COMM’N ON CITY ART, MONUMENTS, & MARKERS, *supra* note 122, at 26.

128. *Id.*

129. For a story about this passage, see *supra* notes 2–3 and accompanying text.

they visit friends together, attend parties, and enjoy an easy and relaxed social life. In addition, the state in which A-City is located has a welfare system that provides personal assistance to Janet for daily self-care tasks (as needed), and were she to marry, Janet's state assistance would continue as before.

Janet then moves to I-City, in a faraway state, for a new job, prompting a breakup with John. In I-City she meets Tim, another lawyer, at a local Bar event, and they hit it off. Janet hopes their spark might develop into a relationship, but even dating proves difficult. Public transportation in I-City is only partly accessible — with most subway stops accessible only by stairs and more than half the city's buses without working lifts — and there are few accessible taxis. Difficulties with transportation make Janet late to work on numerous occasions, at first threatening her status in her new job, though she adjusts by leaving home at ridiculously early hours (something Tim, not a morning person, finds tedious). Most restaurants have steps up to their entrance or such narrow aisles between tables as to make movement in a chair impossible. (Some of these obstacles violate the public accommodations title of the ADA, but compliance is poor and lawsuits have been rare.) The few restaurants that are accessible have tables with big circular bases on the table legs, so Janet has to park her wheelchair back from the table, making intimacy challenging. Movie theaters and stores are all hit or miss in their accessibility. Almost no one's home is accessible, so they cannot attend dinner parties together. Tim's friends feel awkward about this and debate whether even to invite him to things, knowing Janet will not be able to join him. They begin to ask him, subtly and not so subtly, whether he would want to face a lifetime of such constraints. One of them, a social worker, points out that I-City's state revokes personal-assistance services if a disabled beneficiary marries, on the assumption that her spouse will take on those duties. Janet has many more daily frustrations in I-City, and feels a great deal more anger and hostility, which creates tension and conflict with Tim, who sees her perspective but also does not experience it as she does. When he encourages her to be positive, she feels alienated from him and accuses him of an inability to understand her world. He feels excluded, and the distance between them grows.¹³⁰

The powerful symposium on accessible cities presses the question, *in which city do New Yorkers find themselves in the early twentieth century?* Participants at the symposium heard from Victor Calise, the Commissioner of the New York City Mayor's Office for People with Disabilities, examples of efforts the City has been making toward greater

130. Emens, *Intimate Discrimination*, *supra* note 2, at 1370–71 (citations omitted).

accessibility.¹³¹ And in the arts, the DANT report by Simi Linton and Kevin Gotkin cites examples of powerful programming and initiatives — including strides toward access in the arts supported by municipal funds.¹³² But much work remains. The works of Ellis Avery, Park McArthur, and Shannon Finnegan dramatize some of the ways that New York remains Inaccessible-City even 30 years after the passage of the Americans with Disabilities Act.¹³³

A recent *New York Times* personal essay — a genre that uses narrative in service of conveying an insight — complements the artistic productions presented above to help us see better what a truly accessible city might

131. See also *Initiatives*, MAYOR’S OFF. FOR PEOPLE WITH DISABILITIES, <https://www1.nyc.gov/site/mopd/initiatives/initiatives.page> [<https://perma.cc/J4XS-B7YC>] (last visited Sept. 23, 2020).

132. See generally LINTON & GOTKIN, *supra* note 36. They report:

On March 31, 2017, at a DCLA [NYC Department of Cultural Affairs] Town Hall on Disability Arts, DANT articulated a powerful call. The city needed a fund dedicated to access for all DCLA-funded endeavors, which we suggested be called the Cultural Access Fund The DCLA recognized the urgency of our call and responded. In May 2018, they established the Disability Forward Fund (DFF): “A pilot initiative to promote organizations’ new and ongoing programmatic efforts to engage people with disabilities, including artists, cultural workers, and/or audience members.” We believe that the DFF can change the cultures and practices of the institutions it touches.

Id. at 11. Linton and Gotkin then go on to express concerns about how the DFF is being administered. See *id.* at 12. For some examples of specific arts programming centered on or foregrounding accessibility, see *Beyond Accessibility: Elevator Opening*, GIBNEY, <https://gibneydance.org/event/beyond-accessibility-elevator-opening/> [<https://perma.cc/X5H7-VER2>] (last visited Sept. 23, 2020) (announcing events surrounding the elevator installed at the Gibney Company Community Center); Public Theater, *American Sign Language Performances and Interpret Videos*, YOUTUBE (Sept. 9, 2020),

https://www.youtube.com/playlist?list=PLN_BVGqFCTGgmFIN_t8Ym5GUSJjTv1Fut (referencing some of the Public Theater’s programming); Arika et al., *I Wanna Be with You Everywhere*, PERFORMANCE SPACE N.Y., <https://performancespacenewyork.org/shows/i-wanna-be-with-you-everywhere/> [<https://perma.cc/KLL2-JB2P>] (last visited Sept. 23, 2020) (“*I wanna be with you everywhere* is a gathering of, by, and for disabled artists and writers and anyone who wants to get with us for a series of cripp meet-ups, performances, readings and other social spaces of surplus, abundance and joy.”). Linton reports that the Gibney’s elevator was largely funded by New York City’s “DCLA, [Manhattan] Boro[ough] President, [and] City Council funds with additional support from Ford Foundation and the Howard Gilman Foundation.” Email from Simi Linton to Elizabeth Emens (Aug. 21, 2020, 12:56 PM) (on file with author).

133. Americans with Disabilities Act of 1990, 42 U.S.C. § 12101.

comprise.¹³⁴ Emily Ladau writes about the challenges of deciding whether and how to reference her wheelchair in online dating on OkCupid.¹³⁵ Her journey starts with her deciding to display her wheelchair subtly in a photo, which leads to some painful exchanges. For example, one date asks if she is “in a wheelchair” (as if she is always there),¹³⁶ and when she replies yes, but she is more interested in the iguana in his profile, he replies, “Sorry. The wheelchair’s a deal-breaker for me.”¹³⁷ Stage two of Ladau’s journey involves hiding the wheelchair altogether, and then revealing it only after someone has engaged in enough dialogue to know her a little. This leads to some rejections, but also some dates. One of those results in the following telling moment, at the intersection of the arts and (in)accessible New York City:

For the second date, my [date] suggested a painting night (a social event that involves paintbrushes, canvases, acrylics and, usually, wine) since I’d told him how much I enjoy them. He found a Groupon and I researched a location, picking out a restaurant in New York City that was supposed to be wheelchair accessible.

As it turned out, the restaurant was accessible, but the painting class was happening in a room upstairs. So, we spent our entire date sitting directly below the painters, eating dinner and making strained conversation with wine-fueled laughter and painting instruction in the background. I was mortified. Following that disaster, I promised my date I’d get his money back. As soon as the company refunded our tickets, I never heard from him again.¹³⁸

Eventually, at stage three, Ladau decides the way forward is to be upfront about her disability and its role in her identity — both its significance in her life as “a loud, proud disability rights activist” and its status as only one fraction of what matters to her.¹³⁹

134. See Emily Ladau, *Playing the Online Dating Game, in a Wheelchair*, N.Y. TIMES (Sept. 27, 2017), <https://www.nytimes.com/2017/09/27/opinion/online-dating-disability.html> [<https://perma.cc/J44F-9SAG>].

135. See *id.*

136. See *id.* This echoes that inapt phrase heard so commonly, including in court decisions, “confined to a wheelchair,” although wheelchairs enable rather than limit those who use them.

137. *Id.*

138. *Id.*

139. *Id.* (“I’d like to be very upfront about the fact that I use a wheelchair. My disability is part of my identity and I’m a loud, proud disability rights activist, but there is so much more that defines me (you know, like the stuff I’ve got in my profile). I realize some people are hesitant to date a human who experiences the world sitting down. But

New York is yet to reach its stage three: full incorporation of accessibility and disability justice (or disability solidarity)¹⁴⁰ into every dimension of New York City's rich and complicated life, including the arts.¹⁴¹ When New York becomes Accessible City, Ladau will be able to take the subway to a museum at any stop along the route, visit any museum knowing it will be accessible to patrons and artists alike, dine at a restaurant with appealing food without researching accessibility beforehand, and participate in the painting night that follows.¹⁴² Moreover, accessibility and inclusion will not be limited to individuals, privileged along race, class, or other identity axes, whose disabilities are well-known and visible, like wheelchair users, but will comprise those with less common or less well-understood physical and mental disabilities and those with intersecting forms of disadvantage.¹⁴³

This Essay has used literary and other forms of artistic production to set into relief elements of urban inaccessibility. Lack of access constrains and imposes burdens on people with a range of disabilities, as well as the friends, colleagues, and loved ones who travel with them, and therefore diminishes our cities for everyone. Accessibility and the laws and practices that bring it to fruition are a social insurance policy for us all — the presently disabled and the not-yet disabled. We all share a collective interest in the building, restoring, and maintaining the accessible cities of the future. The work of building accessible cities will take not only law, but every form of knowing and persuading, including narrative and other arts, to build the cities we all deserve.

I'd like to think you'll keep reading and dive a little deeper. And you're welcome to ask questions, should you have any.”).

140. On this overlapping term, see *supra* note 108.

141. For vital work setting out steps to getting there, see *supra* Part IV and LINTON & GOTKIN, *supra* note 36. See also Sara, *supra* note 71.

142. For contributions to the idea in this Conclusion, I am particularly indebted to Yaron Covo.

143. *Cf.*, e.g., LINTON & GOTKIN, *supra* note 36, at 7 (“Disability solidarity speaks to how disabled black people specifically, and other multiply-marginalized disabled people live at the intersection of multiple sources of oppression.”).

The dominant culture needs to recognize disability as part of equity, diversity, and inclusion, and understand the overlapping categories of identity. At the same time, disability communities need to acknowledge that disability does not constitute its own monolithic category. When we commit to disability solidarity, we work toward both goals at once.

Id.; see also notes 108–43 and accompanying text.