

ABLEISM

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What is ableism? According to the dictionary, it is “discrimination or prejudice against individuals with disabilities.”² Yet this definition confounds as much as it explains. What is discrimination or prejudice? What is a disability? Scholars and activists who study and challenge ableism recognize that though disability, how it is defined, and who is captured by the term varies in time and place, the through line is about the meaning made of bodily difference. And that some bodily differences – and some people – are valued as less than others.

Here are two definitions that are drawn from community knowledge and provide valuable insights. Lawyer, educator and organizer TL Lewis’s working definition of ableism is:

A system of assigning value to people’s bodies and minds based on societally constructed ideas of normality, productivity, desirability, intelligence, excellence, and fitness. These constructed ideas are deeply rooted in eugenics, anti-Blackness, misogyny, colonialism, imperialism, and capitalism. This systemic oppression leads to people and society determining people’s value based on their culture, age, language, appearance, religion, birth or living place, “health/wellness” and/or their ability to satisfactorily re/produce, “excel” and “behave.” You do not have to be disabled to experience ableism.³

Additionally, Sins Invalid, a disability justice based performance collective, defines disability as follows:

We define disability broadly to include people with physical impairments, people who belong to a sensory minority, people with emotional disabilities, people with cognitive challenges, and those with chronic/severe illness. We understand the experience of disability to occur within any and all walks of life, with deeply felt connections to all communities impacted by the medicalization of their bodies, including trans, gender variant and intersex people, and others whose bodies do not conform to our culture(s)’ notions of ‘normal’ or ‘functional.’⁴

These definitions teach us multiple lessons. One is that the concept of disability depends on social context. These definitions reflect the revisions and replacement of the medical model of disability

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²“Ableism,” *Merriam-Webster*, accessed April 14, 2022, <https://www.merriam-webster.com/dictionary/ableism>

³Talila A. Lewis, “Working Definition of Ableism - January 2022 Update,” *Talila A. Lewis* (blog), January 1, 2022, <https://www.talilalewis.com/blog/working-definition-of-ableism-january-2022-update>.

⁴“Mission and Vision,” Sins Invalid, accessed April 14, 2022, <https://www.sinsinvalid.org/about-us>.

with a socially-grounded model of disability. The medical model foregrounded impairment, or a physically-defined condition. Doctors and other professionals diagnosed impairments, and the aim was to cure or treat them. By contrast, advocates and others developed social models of disability that highlight the social meaning made of impairments. Disabilities can be quite different depending upon context – a person who does not use their legs to move [the impairment] has a very different life depending on whether she can use a wheelchair or other mobility device, if the built environment recognizes wheelchair users, and if she can get and keep jobs, visit friends, have kids, and other aspects of social flourishing. Disability justice advocates and scholars note that what knits together disabled people across different types of impairments is stigma – that society negatively stereotypes their bodily differences.

Advocates such as TL and Sins Invalid also draw our attention to the importance of intersectionality. People can be multiply marginalized by negative values attributed to their bodies due to disability, race, sexuality, or other identity markers. Someone's identity in one area, such as race, can influence how their behavior is interpreted in another area, such as disability. For example, the behavior of a diabetic Black person in insulin crisis may be interpreted as dangerous because of racial bias.⁵ Additionally, injustice in one area can work to produce impairments; for instance, a Black person can be paralyzed due to police violence or poisoned due to lead.

Ableism has a long history in the United States. Disabled people experienced segregated living in institutions, discrimination in the workforce, and rejection in education. The infamous 1927 Supreme Court case, *Buck v. Bell*, granted constitutional approval for the sterilization of people deemed mentally disabled. In the words of Justice Oliver Wendell Holmes, who wrote the majority opinion, “three generations of imbeciles are enough.”⁶ Eugenic-based sterilization led to tens of thousands of forcible sterilization procedures for mentally-disabled men and women, incarcerated people, and people of color. The U.S. sterilization program was an inspirational model for similar practices in Nazi Germany.

Though *Buck v. Bell* has not been overturned, the landscape for disability law and activism is quite different now for disabled people. Laws such as the Americans with Disabilities Act, the Individuals with Disabilities Education Act, and the Rehabilitation Act, have ushered disability into the pantheon of U.S. civil rights legislation. Still, challenges remain. Disabled people are still disproportionately unemployed and incarcerated. They may face difficulties forming and maintaining families. They experience discrimination in medical care, education, and public life. And ableism still saturates attitudes towards disabled people. People with disability may experience disgust or terror towards their bodies and themselves; they may face pity; they may be infantilized; they may be slotted as inspirational figures who have “overcome” their disabilities. All of these attitudes serve to reduce disabled people to a stereotype of their bodies and diminish their standing as full-fledged integrated members of American society.

⁵Law Professor Jamelia Morgan brings such a disability analysis to this fact pattern in *Graham v. Connor*, 90 U.S. 386 (1989), a classic criminal procedure case, and other areas of criminal procedure. See Jamelia Morgan, “Disability’s Fourth Amendment,” *Columbia Law Review* 122, no. 2 (2022).

⁶*Buck v. Bell*, 274 U.S. 200, 207 (1927).

Disability advocates and scholars strive to identify and address the factors that support and maintain ableism. And, they aim to create a society without ableism. This work includes calling for enforcement and funding of existing disability laws; increased support for resources that allow disabled people to live in the world, such as robust medical care and affordable housing; increasing the benefits for disabled people and allowing them to save money; and higher wages and benefits for care workers. It also addresses the overlapping areas of injustice that affect multiply marginalized disabled people, such as ending mass incarceration; incorporating trauma-informed care into areas such as education; supporting environmental justice; and defending reproductive justice.

Selected Bibliography

- Adams, Rachel, Benjamin Reiss, and David Serlin. 2015. *Keywords for disability studies*.
- Annamma, Subini A. 2018. *The pedagogy of pathologization: disabled girls of color in the school-prison nexus*.
- Asch, Adrienne, *Critical Race Theory, Feminism And Disability: Reflections On Social Justice And Personal Identity*, 62 Ohio St. L.J. 391 (2001).
- Bagenstos, Samuel R. 2009. *Law and the contradictions of the disability rights movement*. New Haven: Yale University Press.
- Bagenstos, Samuel R. *Subordination, Stigma, And "Disability,"* 86 Va. L. Rev. 397 (2000).
- Bagenstos, Samuel R., *The Americans With Disabilities Act As Welfare Reform*, 44 Wm. & Mary L. Rev. 921 (2003).
- Barclay, Jenifer L. 2021. *The mark of slavery: disability, race, and gender in antebellum America*.
- Baynton, Douglas C. 2016. *Defectives in the land: disability and immigration in the age of eugenics*.
- Baynton, Douglas C., "Disability and the Justification of Inequality in American History," in Paul Longmore and Lauri Umansky, eds., *The New Disability History: American Perspectives*, NY Univ. Press, 2001.
- Bell, Christopher M. ed., *Blackness And Disability: Critical Examinations and Cultural Interventions* (2011).
- Belt, Rabia. *Ballots for Bullets?: Disabled Veterans and the Right to Vote*, 69 STAN. L. REV. 435 (2017).
- Belt, Rabia. *Contemporary Voting Rights Controversies Through the Lens of Disability*, 68 STAN. L. REV. 1491 (2016).
- Belt, Rabia. *Disability, Law, and the Humanities: The Rise of Disability Legal Studies* [with Doron Dorfman], OXFORD HANDBOOK OF LAW AND THE HUMANITIES (2019).
- Belt, Rabia. *Mass Institutionalization and Civil Death*, 96 N.Y.U. L. Rev. 857 (October 2021).

- Ben-Moshe, Liat, and Allison C. Carey. 2014. *Disability incarcerated: imprisonment and disability in the United States and Canada*.
- Ben-Moshe, Liat, Rebecca C. Cory, Mia Feldbaum, Ken Sagendorf, eds. 2005. *Building Pedagogical Curb Cuts: Incorporating Disability in the University Classroom and Curriculum*. Available at <https://thechp.syr.edu/wp-content/uploads/2014/11/buildingpedagogicalcurbcuts.pdf>
- Ben-Moshe, Liat. 2020. *Decarcerating Disability*.
- Boster, Dea H. 2013. *African American slavery and disability: bodies, property, and power in the antebellum South, 1800-1860*. New York: Routledge.
- Burch, Susan, and Hannah Joyner. 2007. *Unspeakable: the story of Junius Wilson*. Chapel Hill: University of North Carolina Press.
- Burch, Susan. 2002. *Signs of resistance: American deaf cultural history, 1900 to World War II*. New York: New York University Press.
- Burch, Susan. 2021. *Committed: remembering native kinship in and beyond institutions*.
- Carey, Allison C., Pamela Block, and Richard K. Scotch. 2020. *Allies and obstacles: disability activism and parents of children with disabilities*.
- Clare, Eli, Aurora Levins Morales, and Dean Spade. 2015. *Exile and pride: disability, queerness, and liberation*.
- Clare, Eli. 2017. *Brilliant imperfection: grappling with cure*.
- Colker, Ruth, *Anti-Subordination Above All: A Disability Perspective*, 82 Notre Dame L. Rev. 1415 (2007).
- Colker, Ruth, *Anti-Subordination Above All: Sex, Race, And Equal Protection*, 61 N.Y.U. L. Rev. 1003 (1986).
- Connor, David J., Beth A. Ferri, and Subini A. Annamma. 2016. *DisCrit: disability studies and critical race theory in education*.
- Davis, Lennard J. 2013. *The disability studies reader*.
- Davis, Lennard J. 2015. *Enabling acts: the hidden story of how the Americans with Disabilities Act gave the largest US minority its rights*.
- Day, Ally. 2021. *The Political Economy of Stigma: HIV, Memoir, Medicine, and Crip Positionalities*.
- Dorfman, Doron. *Suspicious Species*, 2021 U. Ill. L. Rev. 1363 (2021).
- Dorfman, Doron. [Un]Usual Suspects: Deservingness, Scarcity, And Disability Rights, 10 U.C. Irvine L. Rev. 557 (2020).
- Emens, Elizabeth F., *Disabling Attitudes*, 60 AMER. J. COMPAR. L. 205 (2012).

- Emens, Elizabeth F., Framing Disability, 2012 U. ILL. L. REV. 1383. (2013).
- Emens, Elizabeth F., *Framing Disability*, 2012 U. Ill. L. Rev. 1383
- Erevelles, Nirmala. 2011. *Disability and difference in global contexts: enabling a transformative body politic*. New York: Palgrave Macmillan.
- Ferri, Beth A. & David J. Connor, *Special Education And The Subverting Of Brown*, 8 J. Gender Race & Just. 57, 61, 63 (2004).
- Garland-Thomson, Rosemarie, *Extraordinary Bodies: Figuring Physical Disability In American Culture And Literature* (1997).
- Garland-Thomson, Rosemarie, *Misfits: A Feminist Materialist Disability Concept*, 26 Hypatia 591 (2011).
- Hall, Kim Q. 2011. *Feminist disability studies*. Bloomington: Indiana University Press.
- Harris, Jasmine E. *The Aesthetics of Disability*, 119 Colum. L. Rev. 895 (2020).
- Heyer, Katharina. 2015. *Rights enabled: the disability revolution, from the US, to Germany and Japan, to the United Nations*.
- Hirschmann, Nancy J., and Beth Linker. 2015. *Civil disabilities: citizenship, membership, and belonging*. Philadelphia: University of Pennsylvania Press.
- Kafer, Alison. 2013. *Feminist, queer, crip*.
- Kim, Jina B. 2020. "Disability in an Age of Fascism." *American Quarterly* 72 (1): 265–76.
- Kim, Jina B. 2021. "Crippling the Welfare Queen: The Radical Potential of Disability Politics." *Social Text* 39 (3): 79–101.
- Kim, Jina B., and Sami Schalk. 2021. "Reclaiming the Radical Politics of Self-Care: A Crip-of-Color Critique." *South Atlantic Quarterly* 120 (2): 325–42.
- Linton, Simi. 1998. *Claiming disability: knowledge and identity*. New York: New York University Press.
- Lombardo, Paul A. 2008. *Three generations, no imbeciles: eugenics, the Supreme Court, and Buck v. Bell*. Baltimore: Johns Hopkins University Press.
- Mcurer, Robert & Michael Bérubé, *Crip Theory: Cultural Signs Of Queerness And Disability* (2006).
- Mitchell, David T., and Sharon L. Snyder. 2000. *Narrative prosthesis: disability and the dependencies of discourse*. Ann Arbor: University of Michigan Press.
- Mitchell, David T., and Sharon L. Snyder. 2015. *The biopolitics of disability: neoliberalism,*

ablenationalism, and peripheral embodiment.

- Mor, Sagit & Rina B. Pikkell, Disability, Rights, and the Construction of Sexuality in Tort Claims, *Law and Society Review*. Vol. 53 (4) pp. 1016-1050 (2019).
- Mor, Sagit, The Meaning of Injury: A Disability Perspective, in: *Injury and Injustice: The Cultural Politics of Harm and Redress*, pp.27-49 (Anne Bloom, David Engel, and Michael McCann eds., Cambridge University Press) (2018).
- Morgan, Jamelia, Policing Under Disability Law, 73 *Stan. L. Rev.* 1401 (2021).
- Nielsen, Kim E. 2004. *The radical lives of Helen Keller*. New York: New York University Press.
- Nielsen, Kim E. 2012. *A disability history of the United States*. Boston: Beacon Press.
- O'Toole, Corbett J. *Fading Scars: My Queer Disability History*
- Ribet, Beth. Naming Prison Rape As Disablement: A Critical Analysis of the Prison Litigation Reform Act, The Americans With Disabilities Act, And The Imperatives Of Survivor-Oriented Advocacy, 17 *Va. J. Soc. Pol'y & L.* 281 (Winter 2010).
- Ribet, Beth. *Surfacing Disability Through a Critical Race Theoretical Paradigm*, 2 *Geo. J. L. & Mod. Critical Race Persp.* 209, 209 (2010).
- Russell, Marta, and Ravi Malhotra. 2017. *Disability politics in a global economy: essays in honour of Marta Russell*.
- Sami Schalk. 2017. "Critical Disability Studies as Methodology." *Lateral* 6 (1).
- Samuels, Ellen Jean. 2014. *Fantasies of identification: disability, gender, race*.
- Schalk, Samantha Dawn. 2018. *Bodyminds reimagined: (dis)ability, race, and gender in black women's speculative fiction*.
- Schalk, Sami, and Jina B. Kim. 2020. "Integrating Race, Transforming Feminist Disability Studies." *Signs: Journal of Women in Culture & Society* 46 (1): 31–55.
- Schweik, Susan M. 2009. *The ugly laws: disability in public*. New York: New York University.
- Schweik, Susan, *Lomax's Matrix: Disability, Solidarity, and the Black Power of 504*, 31 *Disability Stud. Q.* (2011).
- Shapiro, Joseph P. 1994. *No pity: people with disabilities forging a new civil rights movement*. New York: Times Books.
- Siebers, Tobin. 2008. *Disability theory*.
- Sins Invalid, Skin, Tooth, And Bone: The Basis Of Movement Is Our People: A Disability Justice Primer (2d Ed. 2019)
- Snyder, Sharon L., and David T. Mitchell. 2006. *Cultural locations of disability*. Chicago: University

of Chicago Press.

- Stein, Michael Ashley, *Same Struggle, Different Difference: ADA Accommodations As Antidiscrimination*, 153 U. Pa. L. Rev. 579 (2004).
- Wendell, Susan. 1996. *The rejected body: feminist philosophical reflections on disability*. New York: Routledge.