

UCLA

Disability Law Journal

Title

Surfacing Disability Through a Critical Race Theoretical Paradigm

Permalink

<https://escholarship.org/uc/item/1q24w7gc>

Journal

Disability Law Journal, 1(1)

Author

Ribet, Beth

Publication Date

2019

Copyright Information

Copyright 2019 by the author(s). All rights reserved unless otherwise indicated. Contact the author(s) for any necessary permissions. Learn more at <https://escholarship.org/terms>

Peer reviewed

SURFACING DISABILITY THROUGH A CRITICAL RACE
THEORETICAL PARADIGM

Beth Ribet

This Article first appeared in the Georgetown Journal of Law &
Modern Critical Race Perspectives, Volume 2, Issue 2.

TABLE OF CONTENTS

INTRODUCTION	308
A. Disability Intersectionality	314
II. CONSTRUCTIONS OF RACE AND DISABILITY	315
III. RECONCEPTUALIZING CRITICAL SCHOLARSHIP.	330
A. Intersectional Embedded or Interactive Conception of Categories	334
B. Vulnerability, Emergent Disability, and Critical Conception of Social Change Goals	338
C. The Role of Western Imperialism in the Social Construction of Disability, Power and Human Worth	347
1. Disabled Outsiders	348
2. Collective Identities and the Politics of Victimization	349
3. Nationalism, Sexuality, and Disease Imagery	354
4. Militarism and Military Socialization	356
IV. REPRESENTATION AND EXPERIENCE	360
A. Disability, Culture, and Definition	363
B. Intelligence, Capability, and the Right of Access	366
1. Hyperperformance	368

2. Accommodation and Shame	369
3. Escalating Inaccessibility	372
4. Visibility and Whiteness	373
C. Normalcy, Silence and Grief	374
V. THE PURPOSE AND USES OF DISABILITY IN THE SERVICE OF WHITE SUPREMACY.	375
VI. FROM THEORY TO LEGAL AND SOCIAL PRAXIS	388
CONCLUSION.	398

INTRODUCTION

From its inception, a number of the founders of Critical Race Studies (CRS) have articulated a praxis and methodology acutely focused on race, and also intently conscious of intersectionality.¹ Disability prospectively merges with the project of producing knowledge within a CRS frame both as part of the study of intersectionality, and also as part of the pedagogical and theoretical goal of “comparative subordination.”

Relatively few CRS authors have explicitly taken up the challenge of articulating disability in CRS scholarship. For instance, I interpret Adrienne Asch’s work² as an example of disability-focused CRS scholarship

¹ See Kimberlé Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics, in FEMINIST LEGAL THEORY: FOUNDATIONS 385 (D. Kelly Weisberg ed., 1993).

² See Adrienne Asch, Critical Race Theory, Feminism and Disability: Reflections on Social justice and Personal Identity, 62 OHIO ST. L.J. 397

primarily based on a “comparative subordination” approach. That is, Asch relies on analogy and application of racially based analysis to disability, interchanging disability as a category of oppression with race as a category of oppression.

Although some aspects of this kind of analysis can be productive, I also note its limitations. This kind of comparative analysis, as represented in Asch’s work, often treats race and disability as relatively discrete categories, focusing on how the two compare, and in some moments degenerating into a debate about which oppression or experience is harder or worse. The unspoken and presumably unconscious assumption in this kind of analysis is that disability is within the terrain of Whiteness, and is either not experienced or not worth articulation for People of Color. More broadly, one might imagine a White disabled person sharing notes with a nondisabled Person of Color, with each noting, “yes, I too have struggled with equal access to bathrooms and water fountains,” “yes, I too have sought remedies through civil rights

(2001); see also Robert L. Hayman, Jr. & Nancy Levie, Un-natural Things: Construction of Race, Gender & Disability, in CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY 161–62 (Francisco Valdes, Jerome McCristal Culp & Angela P. Harris eds., 2002). Unlike Asch, Levit & Hayman are located within Critical Race Theory, and bringing in an analysis of disability and gender, as opposed to engaging Critical Race Theory from the perspective of disability studies. However, despite the differing points of entry, like Asch, they focus on contrasting and comparing race and disability as implicitly distinct categories.

legislation, with disappointing results,” and “yes, people perceive me as lazy, or deviant, less worthy, less capable.” In addition, points of contrast certainly can (or should) emerge. For instance, the denial and erasure of disabled people as sexual³ is a related but different form of sexual oppression than exoticization or demonization of the sexualities of some People of Color.⁴ These demographics—the Person of Color without disability, the White person with disability—are the only ones that fit this kind of discourse, because only when the categories are strictly separated or constructed unilaterally does comparison alone, rather than intersection, make any sense.

³ It should be acknowledged that though this is the more common dynamic, the construction of some people with mental or developmental disabilities as sexually boundaryless or hypersexual is also a medical/cultural archetype. See Michael Perlin, “Everybody is Making Love/Or Else Expecting Rain”: Considering the Sexual Autonomy Rights of Persons Institutionalized Because of Mental Disability in Forensic Hospitals and in Asia, 83 WASH. L. REV. 481 (2008).

⁴ For a helpful discussion of the desexualization of people with disabilities and of the reinvention of disabled sexualities, see ROBERT MCRUER & MICHAEL BERUBE, CRIP THEORY: CULTURAL SIGNS OF QUEERNESS AND DISABILITY (2006). The scrutiny of racial exoticization is certainly not limited to legal Critical Race Studies. See, e.g., BLACK MEN ON RACE, GENDER AND SEXUALITY: A CRITICAL READER (Devon Carbado ed., 1999) for discussions that incorporate both legal and interdisciplinary analyses.

Were the conversation taking place between People of Color with disabilities, the focus would often be on the echoing, resonant, compounded experience of oppression on multiple fronts: (a) The use of disability as “proof” of racial inferiority or as a basis to deny the reality of racial discrimination (i.e., “it is not racism, you’re just truly less capable”), (b) ongoing exclusion or marginalization based on a medical condition or status that originated in experiences of environmental racism, malnutrition or medical neglect, and (c) stereotypes grounded in ableist racism or racist ableism regarding inferiority, incompetence and unworthiness, which are impossible to effectively combat without a dual analysis of both White supremacy and the social construction of normalcy.

The complexity of being simultaneously the target of sexual exoticization and sexual erasure represents an exponential and interactive experience of oppression which neither disability nor racial analysis in isolation can capture, which is compounded further for some by the stigma of deviance, perversion, or disease directed at queer populations.⁵ I acknowledge again, that parts of the strictly comparative analysis are productive, and sharpen recognition of the dynamics and mechanisms of subordination across demographics. However, in pursuing a CRS approach to disability, I seek a more deeply intersectional analysis—one that surfaces and acknowledges the salience of disability from multiple experiential standpoints⁶ and specifically unmask the function of ableism within White supremacist systems.

⁵ Id.

⁶ In conceiving of “experience” in this paper, I draw partly on the

A few authors have already advanced pieces of a more intersectional discussion. Most notably, Dorothy Roberts and Jennifer Pokempner's article, Poverty, Welfare Reform and the Meaning of Disability, particularly addresses the role of racialized and gendered poverty in creating new physical, emotional and socially inscribed disabilities among poor people, particularly children.⁷ Citing the disproportionate rates of certain disabilities among African Americans, they invoke the Disability Studies literature on "emergent disabilities," which stress the salience of disability as the consequence of injuries and deprivations rooted in racial and class oppressions. Roberts and Pokempner scrutinize the overlap between social services related to welfare and disability, noting the fusion of poverty and disability not just relative to poverty as a disabling force, but also to the use of (or invention of) disability diagnoses as a basis to make claims for resources, which, prior to welfare reform, were more rooted in

sociological tradition of standpoint theory typified in the frameworks of Patricia Hill Collins. See generally, PATRICIA HILL COLLINS, FIGHTING WORDS: BLACK WOMEN AND THE SEARCH FOR JUSTICE (1998). Joan Scott's critical historical conception of "experience" claims is also helpful here, in recognizing that while there is no singular or objective formative reality, experiential narratives reveal and implicate power relations. See generally Judith Butler & Joan Scott, Experience, in FEMINISTS THEORIZE THE POLITICAL (1992).

⁷ See Jennifer Pokempner & Dorothy Roberts, Poverty, Welfare Reform and the Meaning of Disability, 62 OHIO ST. L.J. 425–26 (2001) [hereinafter Poverty].

socioeconomic status. As a backlash ideologically and practically similar to (poverty-based) welfare reform is increasingly directed towards disability benefits—in part to mitigate against its use as a remedy for deprivations stemming from poverty and racial subordination—the interaction between disability, gender, race, and class is predictably charged, and laden with compounded stigma.

In this paper, referencing Roberts and Pokempner's work as one model of more intersectional scholarship, I explore additional possible directions for an analysis of disability within Critical Race Theoretical (CRT) frameworks, and I consider the potential interaction between Critical Disability Studies and Critical Race Studies.⁸

⁸ Much of my analysis is grounded in or inspired by discussions and study already undertaken by the "Disability Studies Reading Group," housed within the Critical Race Studies program at the UCLA School of Law. Within the Disability Studies Reading Group, our praxis has been in sync with the kind of methodology and paradigm best represented in the work of Dorothy Roberts (with Jennifer Pokempner) as a recognized CRS scholar, in the sense that it emphasizes disability not just as a coincidental demographic interacting with race, class, and gender, but often as a production or consequence of subordination. In acknowledging this contribution, I must also note that it is indicative of a fairly small strain within CRS scholarship, and represents a powerful, but also relatively early foundation. Some of the frameworks and epistemologies of disability we've developed through our collective study and conversation are not echoed in the broader literatures either within Disability Studies or within

A. Disability Intersectionality

“Critical Race Theory is critical, because it starts with the goal of dismantling white supremacy.” –Mari Matsuda⁹

In producing an approach to disability study within CRT, I begin with a few questions stemming from the quotation above by one of the founders of the CRT movement, Mari Matsuda. This quotation is noteworthy because it clearly centers race-conscious analysis and positions that analysis relative to an overarching advocacy/political goal, grounded in (but not limited to) theory or intellectual process. I also begin with the presumption, already advanced quite thoroughly within disability studies scholarship, that disability (like race) is socially constructed.¹⁰ The question then is how analysis and comprehension of disability is relevant and even integral to “the goal” of combating and dismantling White supremacy.

CRS, except in certain elements. Our understanding of disability within a CRS framework is essentially hybridized from the relatively disconnected literatures, and further supplemented by our own narratives and advocacy experiences. I also acknowledge that our own work in this area is at a very early stage, and will doubtless merit substantial reinvention and development.

⁹ Mari Matsuda, Public Lecture at the Inaugural Symposium of the UCLA School of Law Program in Critical Race Studies (Apr. 2007).

¹⁰ For a critical introduction to the social construction of disability, see D. JOHNSTONE, AN INTRODUCTION TO DISABILITY STUDIES (1998); see also THE DISABILITY STUDIES READER (Lennard J. Davis ed., 1997) [hereinafter Davis].

The following questions explicate this project more specifically. First, how are the social constructions of race and disability connected or related, and how are the constructions of disability reflective of White supremacist or imperialist contexts? Second, what formative presumptions, epistemologies and methodologies would a race-conscious approach to critical disability studies (both legal and interdisciplinary) entail? Third, how are disability and race oppressions experienced, by those people who experience both simultaneously? And how are these experiences reflected or represented within disability movement organizations, and within disability scholarship? Fourth, does disability serve particular functions, or reveal certain dynamics, within White supremacist dominant cultures? Fifth, how can a critical understanding of disability be useful in conceiving of race-conscious remedies or strategies for change, and thereby contributing to the overarching CRS agenda of dismantling White supremacy? My responses to these questions are admittedly preliminary—more an elaboration on possible directions for inquiry—rather than complete or thoroughly explored and empirically supported claims. However, I proffer them as indications of some productive areas for potential scholarship.

II. CONSTRUCTIONS OF RACE AND DISABILITY

Relative to the construction of disability in a White supremacist context, I note that disability and race (and virtually every oppression or basis for subordination imaginable) embody both hierarchy and a definition of normalcy or ideal physicality that privileges the top of the hierarchy. Whiteness, like “able-bodied-ness,” represents a construct

that justifies and organizes the subordination of those who fall somewhat or entirely outside of the dominant construct. This basic insight is in sync with the project of comparative subordination, but as noted, my intention is to push the analysis a bit further, into the terrain of intersectionality. Specifically, I suggest that race can be coded as in itself a disability, and disability as evidence of inferiority, which then reinforces White supremacy.

Historical patterns of medicalization of (White) deviance demonstrate this point. White girls and women have historically been constructed as mentally ill, either for conceiving and reproducing out of wedlock, or for engaging in consensual heterosexual sexuality or relationships with teenage boys or Men of Color.¹¹ While White “deviance” in this respect must be explained by disability in order to maintain an ordering of White normative gendered behavior as “sane,” the presumption has often been that the supposed sexual immorality signaled by single motherhood or by interracial relationships is consistent with the racialized identities and social locations accorded to People of Color. This kind of example is obviously not meant to suggest that People of Color are constructed as less or less frequently disabled at large. Rather, the construct of White normalcy is synonymous with ability, and the constructions of People of Color are correspondingly synonymous with abnormally, dangerous deviance or (infectious) moral sickness, damaged or less worthy or inferior bodies, less capable or intelligent minds—all of which bleed into the

¹¹. See RICKE SOLINGER, *WAKE UP LITTLE SUSIE: SINGLE PREGNANCY AND RACE BEFORE ROE V. WADE*, at 20–40, 86–102, 135, 205–32 (1992).

construction of disability. Where Whites are labeled as disabled and People of Color are not, the implicit assumption is that no additional medicalization is needed to supplement the ideologies already reinforced by histories of scientific racism, religious racialization based on ideologies of savagery, “primitive” religious cultures, inferiority, and other broad social assumptions of racialized norms. In other words, where White behavior that resembles a racialized stereotype accorded to girls and Women of Color is coded as mental illness or disability, it signifies that disability is presumptively the status of being less-than-White. In this instance, it does not necessarily need to be marked as disability unless it appears somewhere unexpected, i.e., in a White person.¹² This is not to suggest that in other moments the association between disability and People of Color is never explicitly marked. Race-conscious analyses of the history of disability in the United States indicate that disability can also be explicitly invoked and attributed to People of Color in order to normalize racist discourse.

Numerous disability scholars have documented the strong association between disease and deformity and racial images and ideologies.

¹². It is important to qualify that gender and sexual identity can be bases for disability stigma as well. In looking at the stigma attached to women and girls pregnant out of wedlock, it is critical to acknowledge that sexism reinforces the idea that socially deviant females are presumptively mentally ill. However, the fact that disability stigma applies or attaches differently when mediated not just by gender or sexual behavior, but by race, is the salient point here.

As Douglas C. Baynton notes, disability is not simply socially constructed and attributed to certain groups; it is then used as evidence of supposed gender, racial, cultural or class inferiority.¹³ Susan Schweick's analysis of the "Ugly Laws," localized U.S. statutes that ban people who are "deformed" or visibly disabled from accessing public spaces, highlights the strength of racialized norms in constituting disability stigma.¹⁴ Race (and the association between darkness and evil or the primitive)¹⁵ interacts with disability (and its association with death, damage, powerlessness, or incapability) and ugliness¹⁶ to create an intensified and intersecting representation of the diseased as inferior, dangerously infectious, others. In fact, it can easily be argued that the underlying premise of eugenics is that race is in itself a kind of disability, and that race/disability must be bred out or eliminated for the good of the (White) "body" of Western societies.¹⁷

^{13.} See Douglas C. Baynton, *Disability and the Justification of Inequality in American History*, available at <http://lwvwv.uua.org/documents/baynton-douglas/justificationinequality.pdf>.

^{14.} Susan Schweick, Public Lecture at the Inauguration of the UCLA Disability Studies Minor (May 2007).

^{15.} See MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1980s* (1986).

^{16.} See, e.g., Nancy Mairs, *Sex and Death and the Crippled Body: A Meditation*, in *DISABILITY STUDIES: ENABLING THE HUMANITIES* (Sharon L. Snyder et al. eds., 2002).

^{17.} Gregory Michael Dorr essentially makes this point, arguing that the

Disability, like race, has been framed as a supposedly solely medical, immutable and indisputably real physical or psychiatric disease or defect.¹⁸ This presumption has historically been a valid legal and social basis for the deprivation of a wide range of human rights. These have included mobility, medical decision making, access to employment or housing, political franchise, legal independence, freedom from physical and sexual violence, and basic survival.¹⁹ In this sense, disability as an imposed medical construct is a presumptive justification for legal or social disability, or disablement, as a set of corresponding legally and socially imposed deprivations and abuses. It bears taking a moment to observe that a range of scholars and advocates concerned with racial justice have

meaning of disability in the U.S. South was deeply embedded in the association between race, sexual perversion and criminality. See Gregory Michael Dorr, Defective or Disabled?: Race, Medicine, and Eugenics in Progressive Era Virginia and Alabama, available at <http://www.history-cooperative.org/cgi-bin/justtop.cgi?act=justtop&url=http://www.history-cooperative.org/journals/jga/5,4/dorr.html>. See also Helen Meekosha & Leanne Dowse, Enabling Citizenship: Gender, Disability & Citizenship in Australia, 57 FEMINIST REV. 49, 50 (1997); see also SHARON SNYDER & DAVID T. MITCHELL, CULTURAL LOCATIONS OF DISABILITY (2006) for a more developed critical discussion of the intersecting racial and disability premises of the eugenics movement.

¹⁸. Id.

¹⁹. See PAUL LONGMORE, WHY I BURNED MY BOOK AND OTHER ESSAYS ON DISABILITY 42 (2003).

invoked the latter concept of disability, not as descriptive of people who are commonly understood as disabled, but as a means to describe legal barriers to access to institutions or rights.²⁰ It should certainly be noted that this pattern is a reaction to the language already used by courts and in public discourse, both contemporary and historical. Race-conscious and Critical Race Theorists are only engaging, not creating that association. However, these descriptions, though getting at a valid issue, have rarely explicitly questioned the presumption that “actual” or “real” disabilities are objective medical truths occasioning an inevitable set of social responses. The message therein is that People of Color are being legally or socially disabled, or treated like disabled people, without a corresponding question about whether disabled people should be treated like “disabled people” (or a recognition that the two categories, race and disability, otherwise overlap). Although not every area of CRS scholarship will necessarily engage the meaning of disability explicitly, I suggest that this omission within the literature overall misses an opportunity for more robust deconstruction of subordination. To elaborate on this contention, I argue that the social and legal disablement of People of Color

²⁰. See, e.g., Cheryl Harris, Whiteness as Property, 106 HARVARD L. REV. 1707 (1993). Though Harris’ analysis is in no way explicitly located in Disability Studies, or engaged with disability as a medical or social status, her confrontation of racism as creating legal “disability” is a good example of this discourse. It can be read as an implicit acknowledgement of the ways in which the problems of inaccessibility, subordination, and marginality transcend demographics, and inform racial meaning.

echoes and reinforces a history of White supremacist characterization of enslaved and colonized peoples as uncivilized or childlike.

In constructing this argument, I presume that patriarchal, White supremacist paternalism, as an ideology and practice applied synergistically and interactively to females, People of Color, children, senior citizens, and people with disabilities, is rooted in a certain understanding of vulnerability or difference as a basis for a supposedly benevolent model of domination. I argue that the most compelling challenges to paternalistic practices and ideologies must deconstruct both the representations of vulnerability and difference and its applications to particular groups, and must also challenge the presumption that anyone can be the valid target of the “for your own good” model of systemic domination.²¹ Doing otherwise leaves some people, and often particularly some People of Color, susceptible to a kind of paternalistic domination on the explicit basis of disability, but rooted in intersecting practices of racism, ableism, classism, sexism, ageism, and heterosexism. To put this premise another way, there is an implicit challenge within CRS to the figurative legal and social “disabling” of People of Color; i.e., race is not a justifiable

²¹. In thinking about the hegemonic acceptance of paternalistic norms, I have been challenged and assisted by the work of historian Aurora Levins Morales, who argues that even relative to children, a demographic which most critical theorists still presume can be the target for a kind of “benevolent” domination, we need to deconstruct our assumptions of agency and capability. See Aurora Levins Morales, *The Politics of Childhood*, in *MEDICINE STORIES: HISTORY AND THE POLITICS OF INTEGRITY* 51–56 (1998).

(legal or social) disability. However, absent an analysis of (racialized) disability itself, this premise leaves open the implicit prospect that disability is still a viable prospect for subordination, and only People of Color who can demonstrate immunity from the abnormalcy or difference which is a basis for legal disablement can assuredly be the focus of liberation or rights-based projects. Given that race itself is so embedded in the historical and entrenched social meanings of disability, I argue that the deconstruction of the relationship of race and disability, and the advancement of a race conscious challenge to ableism, is one of a number of critical aspects of the eradication of White supremacy. As long as this challenge remains unaddressed, the CRT project of interrogating law's role in shaping and limiting identities and legal agency is missing a critical component. As Kaaryn Gustafson frames the issue, "Much recent CRT scholarship has focused on the ways that the law manifests and redeploys systems of privilege and exclusion, as well as the ways legal categories shape and delimit our personal identities. It is high time disability rights be brought into this analysis."²²

In thinking about the interlocking constructions of race and disability, it is also useful to acknowledge the way in which the concept of disablement is militarized in Western societies. As several disability scholars and historians have noted,²³ in most contexts military discourse and strategy are not framed solely or even primarily around the concept of total

^{22.} See Kaaryn Gustafson, Disability, Fluidity, and Measuring Without Baselines, 75 MISS. L.J. 1025–26 (2006).

^{23.} See LONGMORE, supra note 19; see also Davis, supra note 10.

annihilation or genocide of a population—in other words, the point is not to kill the enemy, or at least not all of the enemy. The population-wide goal is to **disable** the enemy (words like cripple or neutralize may also be used interchangeably), so as to render the opposition without agency, power, or capacity to resist domination.

Although most Western legal advocates and scholars think about disablement and warfare primarily in terms of the legal rights and medical needs of war veterans with U.S. citizenship,²⁴ I contend that warfare may also be comprehended as an intentional practice of mass disablement directed against an “other.” I do not mean to claim that every member of any civilian population that has been the target of military aggression will always be disabled based on U.S. or transnational legal definitions of disability²⁵ or will consciously take on a disability identity. Rather, disablement here is a symbolic construction equated to powerlessness, defeat and vulnerability to domination. And again, while individual experiences of disability will likely not be entirely universal and/or recognized as such,²⁶ they are certainly the predictable medical and psychiatric consequences of various forms of warfare,²⁷ with the violent disablement

^{24.} See DORIS FLEISCHER, *DISABILITY RIGHTS MOVEMENT* (2000).

^{25.} See, e.g., The United Nations Convention on the Rights of Persons with Disabilities, opened for signature Mar. 30, 2007, U.N.T.S., available at <http://www.un.org/disabilities/default.asp?id=259>.

^{26.} See Davis, supra note 10.

^{27.} Id.

of some echoing the cultural/political disablement of the totality.²⁸ Meekosha and Dowse add to this insight by noting that the disabling of women (and girls) within a targeted state also serves a particular function in genocide or warfare by crippling the supposed reproductive potential of an enemy other.²⁹ They note that the casting of disabled women (who may still in fact be reproductively capable, i.e., not sterilized), as useless women makes the infliction of disability a particular form of cultural assault.

This insight is important not just in comprehending the relationship between disability and warfare, but also in understanding the pervasion of a certain racialized conception of disability in imperialist and militaristic societies. Critical Race Theorist Muneer Ahmad has pointed to the degree to which apparently extralegal and extraordinary sites like Guantanamo Bay are in fact constructed based on and reflective of “ordinary”

²⁸. However, in contemplating the meaning of the broken body in warfare, it may also be helpful to review Elaine Scarry’s work on torture. See ELAINE SCARRY, *THE BODY IN PAIN: THE MAKING AND UNMAKING OF THE WORLD* (1987); see also Muneer Ahmad’s discussions of Guantanamo Bay. See, e.g., Webcast: Guantanamo is Here: Race, Rights & Citizenship presented at Inaugural Symposium 2007: Critical Race Theory: Mapping the Movement Across Disciplines, (Mar. 2007), available at <https://eres.lawlib.ucla.edu/eres/documentview.aspx?cid=1396&associd=33141>.

²⁹. See Meekosha, supra note 17.

U.S. structures and norms.³⁰ The idea that “Guantanamo is here”³¹—in this schema—highlights the origins of extreme forms of state violence in many of the ordinary or “everyday” structures and ideological and legal norms that typify U.S. society.³² The right of the state to torture, damage, and break bodies and minds without regard for limits set either by the U.S. Constitution or by the Geneva Convention³³ has many possible implications and meanings. A critical one for the purposes of this discussion lies in the exercise of racial power through the infliction of damage, pain and (disabling) levels of physical and psychological harm on individual “enemy combatants”³⁴ as a process which echoes and concentrates the process of state-level military invasion on the bodies of individuals. In her work on torture and pain, Elaine Searcy has noted that the supposed purpose of extracting information from victims often masks the torturer’s intention, conscious or not, to establish a dynamic or interactional narrative upholding the rationale for domination.³⁵ The casting of torture victims in Guantanamo through the quasilegal framework of “enemy combatant” fits this model in the sense that it misplaces a degree of agency and responsibility for the occurrence of torture on its victims (who are supposedly at least semi-voluntary participants in some

30. See Ahmad, supra note 28.

31. Id.

32. Id.

33. Id.

34. Id.

35. See SCARRY, supra note 28.

conception of “warfare”). Further, the designation makes the individual as a “combatant” a symbolic representative of a broader army or enemy. The breaking of his or her body and mind, or the crippling of the enemy, can be understood as a concentrated version of the broader goal of military, legal, and political subordination.

My central point here echoes Muneer Ahmad’s: Guantanamo, though supposedly an extraordinary site distinct from the everyday structures and laws which govern the United States, is in fact an extension of its schema of racial power—revealing that power in more glaring forms is nevertheless grounded in the “everyday.” My own analysis builds on this point to argue that one of the dynamics inherent in the practices deployed in Guantanamo is an intensity of association between (racial) domination and disablement, as expressed through torture. And if, as Ahmad argues, the dynamics in Guantanamo are reflected in the United States at large, then it would be unsurprising, even predictable, to find that disability is (as several disability theorists have argued)³⁶ linked to notions of defeat and subordination, while the idea of victory, might, and political entitlement is grounded in having disabled all others who have not been outright destroyed.

My argument here partially resonates with the growing though still finite literature in disability studies which acknowledges the joint and mutually reinforcing constructions of disability and race based on a White, able-bodied archetype of normalcy, health, intelligence, sanity,

³⁶. See LONGMORE, supra note 19; see also Davis, supra note 10.

and beauty.³⁷ However, I am also taking this argument one step further, in order to make the claim that disability and race do more than intersect in order to reinforce or intensify ideological stereotypes. The role of disability in White supremacist and imperialist praxis, and particularly within rubrics of militarism, is an active institutional process. In other words, it is not simply that the inherent, acquired or attributed characteristics possessed by members of racial groups are interpreted based on a White supremacist construct of ability. Literally physical or psychological disablement (as well as social and political subordination) can also be a process that results in disability imposed through racial power relations. This analysis is not exclusive to disability and race. The various forms of state, communal, and interpersonal violence intrinsic in heteropatriarchal and capitalist systems create a sustained and intersecting vulnerability to exploitation and injury. Ruth Wilson Gilmore's definition of racism as "group-differentiated vulnerability to premature death"³⁸ touches on this point, though I am also conceiving of a continuum of consequences that may be disabling, but not inevitably or immediately fatal.

It is troubling to consider that while disability stigma engenders a noxious set of barriers and deprivations often imposed for no reason other than a gender, racial, class, sexual, ethnic, or age stereotype, communities attempting to respond to the stigma cannot effectively belie its validity by insisting that disability is not present (anywhere). This is particularly

³⁷. Id.

³⁸. See RUTH WILSON GILMORE, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS AND OPPOSITION IN GLOBALIZING CALIFORNIA* 28 (2007).

apparent when considering mental illness as a category of disability. Mental illness is on the one hand the discrediting charge used to stigmatize rebellion, explain distress at supposedly benign circumstances, and police the borders of acceptable behavior.³⁹ At the same time, it can be an actual consequence of the harm of subordination. The construct of mental illness as a discrediting or stigmatizing descriptive applied to sexual deviance, gender nonconformity, racial, or class-based characteristics⁴⁰ will inevitably collide with the experience of traumatic stress, anguish and dissociation engendered by surviving systemic subordination.⁴¹ It is noteworthy, given my earlier discussion of Muneer Ahmad's work, that Critical Race Theorist e. christi cunningham describes the experience of racism as a form of torture directed at People of Color.⁴²

^{39.} See DWIGHT FEE, *PATHOLOGY & THE POSTMODERN: MENTAL ILLNESS AS DISCOURSE & EXPERIENCE* (2000).

^{40.} Id.; see also PETER CONRAD, *THE MEDICALIZATION OF SOCIETY: ON THE TRANSFORMATION OF HUMAN CONDITIONS INTO TREATABLE DISORDERS* (2007).

^{41.} For an introduction to theories of traumatic stress, see BESSEL VAN DER KOLK ET AL., *TRAUMATIC STRESS: THE EFFECTS OF OVERWHELMING EXPERIENCE ON MIND, BODY & SOCIETY* (2006).

^{42.} See e. christi cunningham, The "Racing" Cause of Action and the Identity Formerly Known as Race: the Road to Tamazunchale, 30 RUTGERS L.J. 707 (1999). Mays et al., also advance a relevant discussion of the ways in which racism can constitute a form of neurological assault, in terms of the physiological consequences provoked by relentless experiences of racial discrimination, with resulting negative consequences for

Cunningham's assertion implicitly raises important questions about the degree to which racism may be characterized as an inherently disabling experience, not just relative to its physically violent or brutalizing manifestations, but also relative to the trauma it visits on human psyches.⁴³ To synthesize this argument, one may be labeled crazy as a means of stigmatizing race, gender, class, sexuality, or age (or some intersection, in most instances), one may be made to feel crazy when attempting to assert a narrative or experiential framework counter to the prevailing

health and longevity. See Vickie M. Mays, Susan D. Cochran, & Namdi W. Barnes, Race, Race-Based Discrimination, and Health Outcomes Among African-Americans, 58 AMER. REV. PSYCH. 201 (2005).

⁴³. Id. My purpose here is not suggest that every Person of Color does or should identify as a person with a disability, or that every emotional consequence of experiencing racism rises to the level of “disabling,” whether under social or legal frameworks, and given the varied nature of experience and response to emotional trauma or harm. It's important here to acknowledge the idea of a disability continuum, in which the boundaries between “able-bodied” and disabled are neither strict nor static. It may also be helpful to think of racism and related forms of subordination as a kind of institutional process geared towards, in one way or another, breaking or damaging its human targets, where it does not kill outright. Though not every individual will wind up with the same damage or injury, and though not all harm is irreparable or incapable of healing (and some may be quite transitory or experientially brief), the collective experience is one of profound damage.

hegemony, or one may in fact “go crazy,” in the sense of developing prolonged cognitive and emotional dysfunction as a consequence of the trauma of subordination.

No matter what the origin of the label, stigma, or experience, disability can be used to discredit its bearer. Communities are then faced with perilous choices in which the stigma of mental illness is either accepted, despite the fact that at least some of the labeling is grounded in racial, gendered, and sexual notions of disease, or in which the presence of mental illness is denied or ignored, which then precludes confronting its origins in racial, gender, class, or sexual harm, and negates any prospect for fully acknowledging the experiences of people with disabilities. My purpose here is not to deny any prospect for meaningful intervention in response to intersectional disability stigma, but rather to argue that doing so is going to require a much deeper interrogation and rethinking of the meaning of disability (and its racial, gender, sexual and economic context) than Critical Race Studies or any related field has yet produced.

III. RECONCEPTUALIZING CRITICAL SCHOLARSHIP

The scarcity of disability/race intersectional analysis and advocacy is not limited to Critical Race Theories and Scholars. Although as noted, disability studies as an area has certainly (though not universally) interrogated the role of racist ideology in the construction of disability,⁴⁴ it is noteworthy how many analyses of disability imagery and constructs proceed with minimal or no acknowledgement of their racist underpinnings

⁴⁴. See, e.g., Dorr, supra note 17.

or implications.⁴⁵ It may be inaccurate to simply characterize all of disability studies as a “White” discipline, either in the sense of the entirety of its contributors, or its demonstrated capacity to analyze the racial implications of disability discourse and constructs.⁴⁶ Yet when contemplating the totality, it is striking how relatively limited the analysis of race and racism remains in general, and certainly within legal disability scholarship.⁴⁷

^{45.} It is important to acknowledge that several Critical Disability scholars have acknowledged the relative lack of disability scholarship critically engaged with race. See, e.g., Catherine J. Kudlick, *Disability History: Why We Need Another “Other,”* AMER. HIST. REV. (2003), available at <http://www.historycooperative.org/journals/ahr/108.3/kudlick.html>.

^{46.} Chris Bell critiques the role of Disability Studies in reinforcing White hegemony. See Chris M. Bell, *The Perils of Uniformity, or, How Disability Studies Reinforces the Hegemony of Whiteness,* MINN. REV. (2009).

^{47.} In making this claim, I am referencing a number of the primary anthologies and texts associated with Critical Disability Theory, the inception and development of Disability Studies, as well as texts and articles in the arena of disability law and policy. Again, my contention is not that race is entirely ignored, though it bears recognition that the majority of pieces do proceed with no explicit race-conscious analysis. However, the comparatively few pieces which deal with race, while making some useful theoretical points or tracking certain salient issues, are rarely intersectional analyses, almost never attempt to chart the institutional or structural relationships between disability and White supremacy, or rely only on momentary or additive incorporation of racial analysis. It should also

be acknowledged that the critique is of the broader literature—particular scholarship which deals with racial themes in disability art and literature may not for instance, advance into the terrain of institutional analysis, and may still involve very robust racial analysis. However, where race conscious analysis in the broader literature is limited to these types of works, no comprehensive intersectional theoretical framework can emerge. See CRITICAL DISABILITY THEORY: ESSAYS IN PHILOSOPHY, POLITICS, POLICY AND LAW (Dianne Poithier & Richard Devlin eds., 2006); TOBIN ANTHONY SIEBERS, DISABILITY THEORY (2008); See also MCRUER, supra note 4; JAMES I. CHARLTON, NOTHING ABOUT US: DISABILITY OPPRESSION AND EMPOWERMENT (2000); EMBODIED RHETORICS: DISABILITY IN LANGUAGE & CULTURE (James C. Wilson & Cynthia Lewiecki-Wilson eds., 2001); Ruth Colker, Bi: Race, Sexual Orientation, Gender & Disability, 56 OHIO ST. L.J. 1 (1995); Lennard J. Davis, Crips Strike Back: The Rise of Disability Studies, 11 AMER. LIT. HISTORY 500 (1999); Laura L. Rovner, Disability, Equality & Identity, 55 ALA. L. REV. 1043 (2004); Michael Ashley Stein, Generalizing Disability, 102 MICH. L. REV. 1373 (2004); Michael Ashley, Disability Human Rights, 95 CAL. L. REV. 75 (2007); Michael Ashley Stein, Same Struggle, Different Difference: ADA Accommodations as Antidiscrimination, 153 U. PA. L. REV. 579 (2004); Mary Crossley, Reasonable Accommodation as Part and Parcel of the Anti-Discrimination Project, 35 RUTGERS L.J. 861 (2004); Arlene B. Mayerson & Silvia Yee, The ADA & Models of Equality, 62 OHIO ST. L.J. 535 (2001); DISABILITY CIVIL RIGHTS LAW & POLICY: CASES AND MATERIALS (Peter Blanck et al. eds., 2005). For examples of Disability Studies discourse which include some attention to race, but limited to the parameters

To develop this point, it is useful to outline—as a point of contrast—what a more race-conscious approach to disability studies might look like, building and expanding on the points in the previous section. I proffer the following parameters and characteristics as a model of disability scholarship engaged with legal Critical Race Studies, with Critical Race Theory in related disciplines, as well as with overlapping fields such as immigration studies and cultural studies.

described above, see BONNIE G. SMITH & BETH HUTCHISON, *GENDERING DISABILITY* (2004); see also Davis, supra note 10. Disability scholar Chris Bell critiques the Disability Studies structure and canon on some similar grounds. See Chris M. Bell, Introducing White Disability Studies: A Modest Proposal, in Davis, supra note 10. Beth Ferri and David Connor's work on race and education also goes beyond the usual limits of Disability Studies literature in terms of acknowledging an intersectional structural dynamic, although it primarily focuses on dynamics in public education, without broaching a broader intersectional framework or theory. See Beth A. Ferri & David J. Connor, Tools of Exclusion: Race, Disability, and (Re) Segregated Education, 453 *TEACHERS COLLEGE RECORD* V. 107:3 (2005). Waqar I.U. Ahmad's initial efforts at compiling cross-cultural and critical writings focused on disability and chronic illness should also be acknowledged as a helpful foundation, for a still-to-be developed Critical Race/disability framework. See WAQAR I.U. AHMAD, *ETHNICITY, DISABILITY & CHRONIC ILLNESS* (2000) [hereinafter AHMAD 2].

A. Intersectional Embedded or Interactive Conception of Categories

Although there is certainly a productive reason to analyze partially distinct movement histories, legal treatment of demographics, or particular cases in comparative terms, a race-conscious approach to Critical Disability Theory (or a disability-conscious approach to Critical Race Theory) needs to be intersectional relative to at least three dynamics.

First, definitions of disability should acknowledge the varying origins of disability in genetics or biology, medicalization of deviance, and social context or circumstance (particularly noting disablement, or emergent disability as a consequence of subordination). Although some disability theorists may perceive this as simply a call for a particular type of attention to the social construction of disability (which it also is), I stress that attention to disability's origin, and where appropriate, its relationship to communal histories, is also a critical component of a race-conscious analysis. I make this claim in part because attention to origin allows for acknowledgement of the role of racism, sexism, heterosexism, classism, and related forms of subordination in the production of disabilities. Further, it also enables recognition that one of the consequences of subordination can be intensified vulnerability to and frequency of disablement—or that the occurrence of violent disablement is likely to be proportionate to, and intensified by, intersecting forms of racial, ethnic, gender, economic, sexual, and age-based vulnerability.⁴⁸

⁴⁸. See Poverty, supra note 7; See also Katherine Seelman & Sean Sweeney, *The Changing Universe of Disability*, 21 AM. REHABILITATION 2 (1995); THE SOCIETY AND POPULATION HEALTH READER: INCOME INEQUALITY &

Second, race-conscious disability scholarship in sync with the goals of Critical Race Theorists⁴⁹ will necessarily consider the intersection between ableism and racism as systems of subordination. This imperative is potentially inclusive of the intersection of race and disability in the construction of identities and experience. However, it also entails a consideration of the role of ableism in reinforcing White supremacy and imperialism, and of the role of racism, classism, sexism, and heterosexism in maintaining the economic, legal, and medical marginality and subordination of people with disabilities. There are many potential angles from which to productively engage this question. For instance, disability—as discussed in the previous section—can play a particular role in stigmatizing racial subjects and racialized communities.

Beyond issues of stigma, physical and psychological exhaustion, pain and distress also play a particular role in reducing the lives of people with more substantial emergent disabilities to survival considerations, or in increasingly negating opportunities to participate in social change work. In other words, physical or psychiatric disablement itself, combined with

HEALTH (Ichiro Kawachi et al. eds., 1999). See also Charlotte Vuyiswa McClain, The Triple Oppression: Disability, Race & Gender, South African Human Rights Commission, available at http://www.disabilityworld.org/09-10_02/women/southafrica.shtml.

⁴⁹. For a focused discussion of the goals of the CRT movement, see Mari Matsuda, What is Critical Race Theory?, in WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH AND THE FIRST AMENDMENT (Charles R. Lawrence III et al. eds., 1993).

ableism as a structural and social force, can weaken the ability of communities to maintain strong resistance to subordination by progressively incapacitating their members.

Racism and classism, in turn, often influence the construction of disability rights discourse and disability communal organizations. As a consequence, they contribute to the formation and structure of disability laws in terms that presume White, economically privileged subjectivity. Conceptions of disability rights which are largely conceived as “race-neutral” or racially irrelevant do a poor job of generating advocacy that could address either the needs of most people with disabilities. Further, they preclude recognition of the role of racism and a capitalist political economy⁵⁰ in ensuring continuing disability subordination.⁵¹

It is important to note that the handful of potential responses briefly illustrated here are a sample of examples, not remotely an exhaustive

⁵⁰. In defining this dynamic, my understanding of disability civil rights rests on a recognition that many “rights” to accommodation and access are racially and economically stratified, because many forms of “accommodation” in fact require individual expense (such as for equipment, assistance, or extended time to make use of institutions which are not free—such as higher education), not fully or sometimes even minimally subsidized by the state. In other words, accommodation may in practice be something you have a right to buy, not a right to have regardless of economic (and often by default racial) position.

⁵¹. This challenge is anticipated by Roberts & Pokempner, in acknowledging the racialized “face” of disability. See Poverty, supra note 7.

list of productive points of engagement with the intersection of racism and ableism. It is neither my intent nor is it within the scope of this paper to attempt to anticipate all the possible and necessary responses to the question of how ableism and racism interact and intersect. And it should always be acknowledged that this question is never truly extricable from the ways in which racism and ableism are infused by sexism, classism, heterosexism, ageism, adultism, xenophobia, and religious oppression. My central point here is simply that the largely still imagined field of Critical Race/disability studies must necessarily engage with some aspect of this question in any given intellectual and political project.

Third, and particularly related to projects that engage with issues of identity, the means by which individuals negotiate stigma or generate community (where race, ethnicity and disability intersect with each other and with class, gender, religion, age, sexuality and citizenship) merit rigorous attention, methodological variety, and creativity. This third component of an intersectional analysis is important in conceiving and contributing to social change. Scrutinizing the institutional dynamics of ableist racism or racist ableism⁵² is certainly a critical project. However, this kind of analysis in isolation is disheartening at best. Questions of community and identity are fundamental in finding strategies to acknowledge, claim, narrate, and politicize race and disability in

⁵². In fusing the terminology in this way, I am referencing again, not just the simultaneous experience of race and disability, but the ways in which the two are mutually constituted and exacerbate institutional dynamics of subordination.

terms that acknowledge the complexity and variation of both, while also enabling recognition and deconstruction of the ableist and racist mythologies that are otherwise virtually always automatically deployed at the intersections.⁵³

B. Vulnerability, Emergent Disability, and Critical Conception of Social Change Goals

With some exceptions,⁵⁴ disability social movement organizations and most scholarship on disability law share a presumptive emphasis on rights-claims or civil rights frameworks as the vehicle for social change.⁵⁵ Feminist theorists have acknowledged the utility and the limitations of basing claims for justice or liberation in “rightstalk,” or alternatively (particularly relative to social welfare issues)—an alternate

^{53.} See Baynton, supra note 13.

^{54.} One interesting challenge to the location of disability justice in notions of individual rights plays out through advocacy for “universal design,” which emphasizes the preexisting and planned structural accessibility of spaces and institutions. The universal design agenda is noteworthy in that it decreases the need for individual deployment of rights-claims by anticipating disability needs. See Michael Davidson, Universal Design: The Work of Disability in the Age of Globalization, in Davis, supra note 10; see also Marta Russell, What Disability Civil Rights Cannot Do: Employment & Political Economy, 2 DISABILITY & SOCIETY 17 (2002).

^{55.} See, e.g., PAUL T. JAEGER & CYNTHIA ANN BOWMAN, UNDERSTANDING DISABILITY: INCLUSION, ACCESS & DIVERSITY, AND CIVIL RIGHTS (2008).

but related framework—”needs-talk.”⁵⁶ One of the perils of this kind of paradigm is that although engaging with civil rights laws (and rights frameworks generally) is a valuable and necessary tactic, it can often become the boundary or endpoint of our conceptions of advocacy goals. Critical Race Theorists and Feminist Legal Theorists have repeatedly challenged one of the more noxious dimensions of a U.S. domestic rights frameworks grounded in notions of equality or in equal protection claims—namely the difficulty of successfully advancing a substantive rather than formalist conception of equality.⁵⁷

My purpose here is not to delegitimize robust critiques of formalism or attempts to negotiate social change through substantive conceptions of equality. However, I contend that the particular challenge of responding to systemic violent or exploitative disablement strains the capacity of contemporary rights discourse, and may not be readily fully realizable through an equality paradigm (even a comparatively substantive incarnation) or through a rights-based matrix for making claims. The politics of disablement and subordination implicate interlocking dynamics. Some, such as discriminatory exclusion from social institutions, can more clearly be articulated as violations of rights.

^{56.} See NANCY FRASER, UNRULY PRACTICES: POWER, DISCOURSE, AND GENDER IN CONTEMPORARY SOCIAL THEORY (2008).

^{57.} See e.g., Neil Gotanda, A Critique of “Our Constitution is Color-Blind,” in KIMBERLÉ CRENSHAW, ET AL., CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (1996).

Similarly, violent assaults, whether criminalized or not, can be framed as violations of human or civil rights frameworks or laws. However, the framing is more challenging relative to for instance the long-term, gradual disabling consequences of overwork in (at least arguably or semi-) voluntary wage-labor.⁵⁸ The right to unionize is relevant, but—particularly in a globalization context where unions are losing the lock on available labor forces (i.e., most corporations can simply leave and find a new, vulnerable labor force), and absent a level of transnational organizing which has yet to manifest⁵⁹—is an inadequate safeguard on its own. Provisions of labor law in various domestic contexts may also have some utility, relative to workplace safety or workers' compensation for instance, but common workplace safety regulations⁶⁰ regarding injury, exposure to toxins, or

^{58.} Daniel Bender confronts the more extreme relationships between labor exploitation and health decline. See DANIEL BENDER, *SWEATED WORK, WEAK BODIES: ANTI-SWEATSHOP CAMPAIGNS AND LANGUAGES OF LABOR* (2004). However, the health consequences of more “ordinary” overwork are also hinted at by Juliet Schor. See JULIET SCHOR, *THE OVERWORKED AMERICAN: THE UNEXPECTED DECLINE OF LEISURE* (1993).

^{59.} See, e.g., LAW AND GLOBALIZATION FROM BELOW: TOWARDS A COSMOPOLITAN LEGALITY (Boaventura de Sousa Santos & Cesar A. Rodriguez-Garavito eds., 2005); see also RALPH ARMBRUSTER-SANDOVAL, *GLOBALIZATION AND CROSS-BORDER SOLIDARITY IN THE AMERICAS: THE ANTI-SWEATSHOP MOVEMENT AND THE STRUGGLE FOR SOCIAL JUSTICE* (2004).

^{60.} See, e.g., U.S. Dep't of Labor, Occupational Safety & Health Administration, available at <http://www.osha.gov>; ERIC J. CONN, *OCCUPATIONAL*

safe use of equipment are nowhere near expansive enough to address the larger issue of a healthy work-life balance or the slower medical consequences of more grueling forms of labor. It is also difficult to imagine a successful deployment of torts law where the claim is that voluntary, contractual wage labor between two adult parties is, over decades, disabling or sickening—not because of a specific working condition, but because of the physical/medical costs of doing labor.⁶¹

The presumption that economic parties have the right to contract for and use labor (excepting outright slavery) without considering or simply not caring whether the use of labor will eventually destroy the health of the workers is implicit, and largely unacknowledged, in Western capitalism.⁶² A critical issue here is vulnerability to exploitation. As noted, violent disablement may be actionable when the disabling act is clearly criminal or comprehensible within the frameworks of tort law or labor law. But where the product of power relations bear some overt element of agency or (coerced) consent (or where many workers' labor rights have been suspended, as in prisons), it is implicit that the vulnerable party by

SAFETY AND HEALTH LAW HANDBOOK (2007).

^{61.} Even relatively expansive approaches to workers' health and rights focus on particular conditions or applications of existing labor laws, which enforce bargaining rights and minimal safety standards. See, e.g., RICHARD E. SALL, STRATEGIES IN WORKERS COMPENSATION (2004).

^{62.} See, e.g., JERRY Z. MULLER, THE MIND AND THE MARKET: CAPITALISM IN WESTERN THOUGHT (2003); ARUNDHATI ROY, AN ORDINARY PERSON'S GUIDE TO EMPIRE (2004).

virtue of contract/consent or other act or stigma (i.e. a crime) can be to some significant degree, damaged without generating liability, even if the long-term consequences are fatal.

Time is also an important factor here. In legal systems where comparatively stronger protections exist relative to laborers, to the rights of institutionalized or incarcerated people, or other particularly vulnerable populations, there may be prospects of advancing some sort of claim or legal action when an emergent disability is clearly grounded in the finite acts of a concrete actor. But establishing liability or culpability for the slow damage inflicted on communities through decades of labor exploitation or arguing for reparation or damages which acknowledge the consequences of deprivations, violence or harm, as they transmit across generations (from a wide range of subordinating institutions, inclusive of labor exploitation, but also applicable as already noted to incarceration, and to victims of environmental racism,⁶³ refugees, immigrants and survivors of warfare and genocide, to list only a few) ranges from very difficult to impossible.

Without getting into a deeper discussion of Critical Race Theories and Marxism, socialism, or critical legal relationships to capitalism,⁶⁴

^{63.} See, e.g., Dana Alston & Nicole Brown, Global Threats to People of Color, in CONFRONTING ENVIRONMENTAL RACISM: VOICES FROM THE GRASSROOTS (Robert D. Bullard ed., 1999); WINONA LADUKE, ALL OUR RELATIONS: NATIVE STRUGGLES FOR LAND AND LIFE (1999).

^{64.} For more race-conscious approaches to these questions, see CHARLES MILLS, FROM CLASS TO RACE: ESSAYS IN WHITE MARXISM AND BLACK

what is still striking about this point as applied to labor is that there is virtually no existing legally protected or even legally contested right to be free from this form of exploitative disablement, or at least to recover substantive reparation or compensation.⁶⁵ Without a framework for the right to not be exploitatively disabled, there cannot effectively be defensible or adequate employment rights, once disablement becomes significant enough to make the disabled worker actually or apparently substantively more expensive or less profitable to employ.⁶⁶ In the context of an increasingly transnational economy, where sweatshop labor or related forms of super-exploitation are frighteningly normative and consistently reliant on racial, economic, and gender vulnerability, Critical Race/Disability Theorists face the challenge of having to articulate new, largely untested, and undoubtedly threatening bases for mounting more than piecemeal legal resistance. The question of equality as a viable goal in this context (and its meaning for people with emergent disabilities)

RADICALISM (2003); CEDRIC J. ROBINSON, *BLACK MARXISM: THE MAKING OF THE BLACK RADICAL TRADITION* (2000); CAROL PATEMAN & CHARLES MILLS, *THE CONTRACT & DOMINATION* (2007).

⁶⁵. SALL, supra note 61.

⁶⁶. Consider this problem relative to Title I of the Americans with Disabilities Act, which makes expense of accommodation a defense to a charge of employment discrimination. Even if the employer has created the need for accommodation, economic inefficiency is an adequate means to prevent a successful civil rights claim. See Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12111–213 (2000).

is easily another paper in itself, as is any comprehensive discussion of rights discourse or its conceivable alternatives.⁶⁷ And my purpose is not to dismiss either framework as productive or at least necessary avenues for advocacy. The most critical point here is that a race-conscious intersectional disability legal theory must necessarily think about social change goals in terms that pose more than a superficial challenge to systemic disablement.

Without attempting to explore any of these topics much further here, I note two areas that may be particularly productive for future scholarship. First, to the extent that rights discourse continues to be central, it will be critical to begin to advance a new rights formulation relative to disability—essentially along the lines of the “right to health” (i.e., the right to be as free as possible from state or private action which substantially impairs health, is disabling, or advances mortality), or some framework of rights to opportunities, such that vulnerability to violent or exploitative disablement is increasingly eliminated.⁶⁸

⁶⁷. For a useful philosophical introduction to this question, see generally IRIS MARION YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* (1990).

⁶⁸. Some of these themes are already embodied in policy analyses and advocacy focused on the idea of “cultural rights,” and are moving from an exclusively individualized rights framework toward an idea of the social good which embraces both individual and collective agendas, and challenges structural domination. See, e.g., CELIA LURY, *CULTURAL RIGHTS: TECHNOLOGY, LEGALITY, AND PERSONALITY* (2007); *GIVING MEANING TO ECONOMIC, SOCIAL AND CULTURAL RIGHTS* (Isfahan Merali & Valerie Oosterveld eds., 2001).

Second, the work of existing critical theorists who are carefully scrutinizing vulnerability will likely yield substantial strategies and insights if applied specifically to the issue of emergent disabilities. I note particularly the work of Feminist Legal Theorist Martha Fineman, who proposes a reconceptualization of equality based on (a) the recognition that vulnerability is a universal human condition (though it varies by type and degree), and (b) the idea that equality is best realized by ensuring access to protections and resources which are responsive to universal vulnerability.⁶⁹ Critical Race Theorist Uma Narayan also has been attentive to the role of vulnerability in mediating citizenship, power, and racial

⁶⁹. See Martha Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, YALE J. OF L. & FEMINISM, 20:1 (2008). I also acknowledge the work of Ani B. Satz, who has explicitly applied Fineman's vulnerability theory to the subject of disability rights, in order to propose a hybrid social welfare and civil rights disability legal paradigm. Ani B. Satz, *Disability, Vulnerability, and the Limits of Antidiscrimination*, WASH. L. REV. 513, 522 (2008). It should be noted that in order to make Fineman's (or Satz's) framework helpful in the context of Critical Race Studies, more nuanced attention to the differentiation, rather than the universalism of vulnerability is needed. Fineman does not deny demographic variability in degrees and experiences of vulnerability, but I argue that she also does not thoroughly explicate the politics of vulnerability and racial difference.

subordination, and the necessity of attending to vulnerability in conceptualizing racial, economic, and gender justice.⁷⁰

Last, I acknowledge that the kinds of paradigm shifts I am referencing here (in very minimal and initial terms) are ambitious. If realized in some form, they would constitute dramatic policy, ideological, and discursive reorganization. However, I contend that particularly where racism and intersecting bases for subordination are generating disablement, the dynamics at stake are largely without recourse.⁷¹ In other words, although smaller tactical goals may be worthy and achievable within existing legal doctrine, moving towards the development of a meta-framework (or multiple versions) which takes the problem of racial (and gender, economic, sexual, ethnic, religious, and age-based) vulnerability to violent disablement as its organizing principle is crucial.

⁷⁰ Uma Narayan, Towards a Feminist Vision of Citizenship: Rethinking the Implications of Dignity, Political Participation and Nationality, in RE-CONSTRUCTING POLITICAL THEORY 47 (Mary Lyndon Shanley & Uma Narayan eds., 1997).

⁷¹ To some extent, I am making a parallel and intersecting argument to that formulated by Kimberlé Crenshaw, relative to the interaction between race and gender. The intersection between disability and related forms of subordination engenders an intersectional dynamic which can at best only be legally redressed to the extent that law recognizes each constituent subordinating dynamic, and in practice is likely to be less cognizable, because of the static conception of categories. See Crenshaw, supra note 1.

C. The Role of Western Imperialism in the Social Construction of Disability, Power and Human Worth

Disability advocate Marta Russell has repeatedly pinpointed the role of Western capitalism in constructing the meaning of disability.⁷² The organization of the social world in capitalist political economies generates a hierarchy in which human bodies are largely conceived of (and objectified) as labor capital.⁷³ Within this system, the bodies and minds of people with disabilities are understood as damaged, defective, or—in terms of labor potential—useless or used up.⁷⁴ I suggest that there are two essential ideological components embedded within this understanding. First, as noted, human worth (and the rights and privileges which are proportionately accorded to it) is presumed to be quantifiable based

^{72.} See, e.g., Marta Russell & Jean Stewart, Disablement, Prison & Historical Segregation, MONTHLY REV. (2002), available at <http://www.monthlyreview.org/0701russell.htm> [hereinafter Stewart]; Russell, supra note 54; Marta Russell & Ravi Malhotra, Capitalism & Disability: Advances & Contradictions, SOCIALIST REGISTER (2002) [hereinafter Russell 2]; Marta Russell, Backlash, the Political Economy and Structural Exclusion, in BACKLASH AGAINST THE AMERICANS WITH DISABILITIES ACT: REINTERPRETING DISABILITY RIGHTS 254 (Linda Hamilton Krieger ed., 2003); MARTA RUSSELL, BEYOND RAMPS, DISABILITY AT THE END OF THE SOCIAL CONTRACT (1998) [hereinafter Russell 3].

^{73.} See KARL MARX, WAGE LABOR AND CAPITAL (1891), available at <http://www.marxists.org/archive/marx/works/847/wage-labour/index.htm>.

^{74.} See Russell, supra note 54; see also Russell 2, supra note 72.

on the ability of bodies to serve an economically valuable role; in other words, capitalism determines human worth. Second, virtually any disability is presumed to tarnish or mar a “normal” template of a worker’s capacity or potential—meaning that people with disabilities are presumed to be less capable of valuable production. A critical conception of disability, even without any substantial challenge to capitalist presumptions, might challenge at least the automatic presumption that all or any disabilities render individuals thoroughly incapable or economically talentless.⁷⁵

However, within this schema, the presumptions of both capitalism and ableist representations of disability are dominant. An analysis like Russell’s is particularly useful in deconstructing arguments about disability access and accommodation as “too expensive,”⁷⁶ an argument which presupposes that economy is a stronger determinant than any other conceptions of individual or communal liberty, wellbeing or actualization. However, a critical analysis of disability and human “worth” still could benefit from more developed scrutiny of the intersection of capitalism and imperialism, and of the relationship between imperialism, racism, disability, and disablement. Although my purpose here is not to anticipate all the parameters of this type of analysis, I proffer a few starting points.

1. Disabled Outsiders

Edward Said’s classic study of Orientalism⁷⁷ catalyzed a breadth of work within cultural studies attentive to the projection of a range of

^{75.} Id.; see Davis, supra note 10.

^{76.} See Russell 3, supra note 72.

^{77.} EDWARD SAID, ORIENTALISM (1979).

negative and/or exoticized characteristics onto the targets of domination.⁷⁸ The role of disablement and disabled bodies in this analysis has, for the most part, remained undeveloped.⁷⁹ A dimension that begs for more critical interrogation is the construction of imperial ideals of civilization and physical perfection,⁸⁰ and the role of disability as counterpoint to that racialized ideal.

2. Collective Identities and the Politics of Victimization

As already noted, a central tension in confronting disablement—as a political practice targeting particular communities—is that to do so involves claiming disability. Making this claim engenders vulnerability to disability stigma. This is a dilemma that at its core reflects political relationships not just to vulnerability or disability, but reflects also to victimization and victim blaming. One of the most obvious and critical aspects of Feminist Legal Theory—at least in its origins⁸¹—is that it challenges the legal and social legitimacy of (gender) victimization and

⁷⁸. See generally *ORIENTALISM: A READER* (Alexander L. Macfie ed., 2001).

⁷⁹. Id.

⁸⁰. Although the framing of this issue is not explicitly disability conscious, the elements of this critique are already present. Id. Meekosha and Dowse do begin to tackle this issue, in their analyses of the role of disability in notions of citizenship. See Meekosha, supra note 17.

⁸¹. See generally *FEMINISMS: AN ANTHOLOGY OF LITERARY THEORY & CRITICISM* (Robyn R. Warhol & Diane P. Herndl eds., rev. ed. 1997); *FEMINISM: THE ESSENTIAL HISTORICAL WRITINGS* (Miriam Schneir ed., 1994); *APPLICATIONS OF FEMINIST LEGAL THEORY* (D. Kelly Weisberg, ed., 1996).

attempts to secure some legal recourse and legitimate avenue for agency accessible to those who are victimized. Interdisciplinary feminist scholarship on victimization in the past two decades has also encompassed and engendered repeated criticism, relative to the racial perils of representing (“other”) females as victims. Chandra Mohanty’s Under Western Eyes serves as a benchmark example of this kind of critique⁸² and is echoed in contemporary legal scholarship by Critical Race Feminist Leti Volpp, who challenges the deployment of stereotypical constructs of gender oppression within broader racist representations.⁸³

My purpose here is not to challenge the necessity and importance of these debates, particularly as they represent a confrontation of racism within feminism. However, I argue that the fundamental challenge to imperialism (including as it manifests in Feminist writing and advocacy) represented in the works of authors like Mohanty and her postcolonial and Critical Race Theoretical counterparts⁸⁴ has sometimes been reduc-

^{82.} See Chandra Mohanty, Under Western Eyes: Feminist Scholarship, in FEMINISM WITHOUT BORDERS: DECOLONIZING THEORY, PRACTICING SOLIDARITY 17 (2003).

^{83.} Leti Volpp, Cultural Defenses in the Criminal Legal System, Asian and Pacific Islander Institute on Domestic Violence, available at http://www.apiahf.org/images/stories/Documents/publications-database/dv_CulturalDefenseLVolpp.pdf.

^{84.} Id.; Mohanty, supra note 82. See also Sherene H. Razack, Imperiled Muslim Women, Dangerous Muslim Men and Civilised Europeans: Legal and Social Responses to Forced Marriages, 12 FEMINIST LEGAL STUDIES 129

tively interpreted as a blanket indictment of any critical opposition to (gender) victimization, rather than as a critique of the use of victimization in racist or colonizing discourse.⁸⁵ Although I believe the contributions of authors like Mohanty and Volpp are astute and—in themselves—effective critiques, I am also contending that the resulting debates have often polarized gender victimization and cultural/racial agency.⁸⁶

This dynamic has at least three consequences. First, it has ironically obscured opportunities to recognize intersectional experiences of gender/racial/economic victimization.⁸⁷ Second, it often implicitly dissoci-

(2004), for a helpful confrontation of the racial politics of gender victimization and representation, specifically noting the racist deployment of gender criticism in legal engagements with Muslim communities.

^{85.} An attentive reading of Mohanty's work, and her subsequent commentaries helps to explicate this point. Mohanty, supra note 82. See generally CHANDRA MOHANTY, *FEMINISM WITHOUT BORDERS: DECOLONIZING THEORY, PRACTICING SOLIDARITY* (2003).

^{86.} See, e.g., DIANA TIETJENS MEYERS, *GENDER IN THE MIRROR: CULTURAL IMAGERY & WOMEN'S AGENCY* (2002). I would add that while Chandra Mohanty's work was and remains a benchmark critique within feminist scholarship, parallel and subsequent debates have often continued to engage the politics of representing victimization and agency, while losing the primary focus on race, cultural and imperialism. See, e.g., CAROL S. VANCE, *PLEASURE AND DANGER: EXPLORING FEMALE SEXUALITY* (1993).

^{87.} In contrast, it is helpful to consider popular works by Feminists of Color who confront the issue of racial/gender victimization without a

ates victimization and agency as if they are never simultaneously present and in tension. This is not to suggest that victimization and agency coexist easily, but rather that in most exploitative and many violent situations, some degree of each is in play. Finally, and most critical to this discussion, it leaves the work of unpacking the experience and institutional dynamics of victimization poorly attended to. In other words, we end up debating whether victimization is happening and struggling over the power relations involved in naming it (again both valid tasks, but not the only important questions), without adequately exploring what victimization is, what it means to and about those who experience it. I am intentionally leaving this critique underdeveloped, primarily because it would require another research paper.⁸⁸ However, I am extracting one conclusion which I believe has urgent implications for Critical Disability/Race scholarship. Specifically, in interpreting the politics of racial derogation and subordinating representation often involved in labeling others as victims, it is easy to reinforce or read the implicit association or stigma that people who are victimized are in fact pathetic, inferior, and incapable of agency. It is then easy to slip into the assumption that it is identifying victimization

reductive or objectified conception of victimization, and with explicit acknowledgement of the role of White supremacy in victimization. See EVELYN C. WHITE, *CHAIN CHAIN CHANGE: FOR BLACK WOMEN IN ABUSIVE RELATIONSHIPS* (1995).

⁸⁸. I delve further into these questions in another work. See Beth Ribet, *Toward a Critique of Sexual Imperialism: A Research Agenda* (2008) (unpublished paper).

generally, rather than the power in labeling and defining others in simplistic terms, that makes the term “victim” so racially dangerous. There are, of course, many forms and consequences of victimization, and I am not attempting definitional work here.⁸⁹ However, subordination which has as its consequence severe or permanent physical or psychological damage (i.e. disablement) is certainly politically charged and substantial enough to tap into the cultural and social anxieties associated with victimization. As noted earlier in the paper, communities attempting to respond to and recover from racial assaults justified by stereotypical conceptions of inferiority may be understandably and deeply conflicted about disability. In conceiving a critical response to the disabling consequences of imperialism, I suggest that it is necessary to do more than simply document emergent disabilities (though this is certainly essential, particularly in formulating legal claims for any kind of race-conscious remedy). It

⁸⁹. The feminist controversy over representing and naming victimization has been so preoccupied with (or preoccupied with deflecting) critiques of imperialism or debates about sexual agency, that in many instances the prospective utility of the term has been abandoned, except by those who ignore the critical debate altogether. However, it is helpful to recall that the concept is also in play in critical literatures primarily engaging race. See, e.g., *RACIST VICTIMIZATION* (John Winterdyk & Georgios Antonopoulos eds., 2008). Of course, some of the same critiques may still be applicable, particularly when conceptions of victimization lack nuance or attention to the politics of objectification, but the shift in context provides a useful analytical contrast point.

is also important to attend to the meaning of disability in discourses of domination—to directly confront and deconstruct the bi-part assumption that disability equates to inferiority, and then that disability inferiority implicates or somehow proves racial inferiority and/or unmitigated and permanent defeat/subordination.

Further, in countering the extremely loaded association racial disablement (interacting with ableism) engenders, it is important to carefully acknowledge and narrate a continuum of experiences ranging from realities of gradual destruction to instances of positive, creative adaptation, or individual and collective healing. “Thicker description” takes time and effort,⁹⁰ but it also allows for a conception of disablement and victimization that does not automatically preclude recognition of agency, minimize the consequences of victimization, or reflexively reinforce the intertwined associations between damage, worthlessness, and (deserved or inevitable) subordination. Nothing else can be adequate in confronting the disabling mechanisms and cultural, physical and psychological consequences of imperialism.

3. Nationalism, Sexuality, and Disease Imagery

Building further on the theme of Western xenophobia and the notion of disability as “other,” it is useful to consider the fusion of ableism, sexism, racism, and heterosexism in constructs of nationhood and national purity. Feminist anthropology and transnational theory have

⁹⁰. See generally Clifford Geertz, *Thick Description: Toward an Interpretive Theory of Culture*, in *THE INTERPRETATION OF CULTURES: SELECTED ESSAYS* 3 (1973).

painstakingly deconstructed the role of gender ideology and imagery in constituting nationhood—a symbolic and systemic dynamic which translates into a variety of pressures, tensions, limits, and strategic opportunities for individual women and girls.⁹¹ In a related vein, George Mosse’s classic work, Nationalism and Sexuality,⁹² and a variety of contemporary writings, notably Sander Gilman’s work on genocide and disease metaphors,⁹³ have emphasized how sexual dichotomies and pathologies pervade the construction of citizenship and nationalism in totalitarian states. In this type of schema (both of the aforementioned authors focus on the Third Reich while drawing broader conclusions about fascism),⁹⁴ the construction of a racial other as the primary site of sexual perversion, threats to sexual purity (i.e., through the supposed lure of “whores” represented by racialized female others) or of sexually transmitted diseases draws on sexual and cultural anxieties in order to strengthen nationalist commitments and xenophobic activity, as a kind of defense of the physical and symbolic national body. In the process it

^{91.} See generally BETWEEN WOMAN AND NATION: NATIONALISMS, TRANSNATIONAL FEMINISMS, AND THE STATE (Caren Kaplan, Norma Alarcon & Minoo Moallem eds., 1999).

^{92.} GEORGE L. MOSSE, NATIONALISM AND SEXUALITY: RESPECTABILITY & ABNORMAL SEXUALITY IN MODERN EUROPE 153 (1997).

^{93.} Sander L. Gilman, Plague in Germany, 1939/1989. Cultural Images of Race, Space, and Disease, in NATIONALISMS AND SEXUALITIES 175 (Andrew Parker et al. eds., 1992).

^{94.} Id.

also laces domination with sexual pleasure, creating pornographic association between conquest, exoticization, and sexual invasion.⁹⁵ Although aforementioned literature on nationalism and sexuality does not focus on disability, termed as such, the link to Critical Disability theories that focus on the medicalization of deviance is fairly evident to anyone versed in both areas.⁹⁶ The fear of a perverse, unnatural, or hazardous difference located on the body blends aversion to the “feminine” (i.e., weak, emasculated), the crippled or diseased, and the queer/perverse into a range of threatening and/or exotic sexual stereotypes. These aversions can be deployed with devastating force to mobilize racial hostility, compel economic or political participation in nationalism or nation building, and energize military aggression.

4. Militarism and Military Socialization

Building on the previous point, and relating back for a moment to the discussion in Part II of this paper on the issue of warfare, I argue that the significance of disability as a site of cultural fear, anxiety, and basis for in-group loyalty cannot be underestimated. The “other,” the enemy, is considered and constructed as inherently different in physicality, mentality and sexuality. Conquest and domination are then justified as necessary

⁹⁵. Feminist literatures on the eroticization of invasion and genocide explicate this theme further. See generally MASS RAPE: THE WAR AGAINST WOMEN IN BOSNIA-HERZEGOVINA (Alexandra Stiglmayer ed., 1994).

⁹⁶. Sander Gilman’s contribution in this area is also more explicit in other works. See SANDER L. GILMAN, DISEASE & REPRESENTATION: IMAGES OF ILLNESS FROM MADNESS TO AIDS (1988); CONRAD, supra note 40.

remedies (preventative medicine in a sense) to stop contagion and to cripple or destroy the other/enemy/disease first. These associations are further intensified in a context where the idea of germ or biowarfare has gained increasing centrality in military and policy discourse.⁹⁷ Aside from the questions of public discourse, media posturing and cultural representation, it is very useful to think about the significance of ability and disability in intramilitary socialization.

Feminist theorists have repeatedly engaged the hypermasculinity infused into soldiering in Western militaries.⁹⁸ The construction of the soldier as “Super Man,” purified of all feminine qualities and weakness, rapaciously heterosexual,⁹⁹ and an idealized antithesis of a racial enemy, is also reliant on the idea of a body and mind without vulnerability, and with few inherent limitations.¹⁰⁰ It is not a stretch to argue that soldiers are presumptively able-bodied; certainly many militaries exclude people

^{97.} Bioterrorism prevention is now a formalized public health mandate. See Centers for Disease Control and Prevention, <http://www.bt.cdc.gov/bioterrorism> (last visited Sept. 29, 2010).

^{98.} See, e.g., *SEXISM & THE WAR SYSTEM* (Betty A. Reardon ed., 1996); CYNTHIA ENLOE, *GLOBALIZATION & MILITARISM: FEMINISTS MAKE THE LINK* (2007); *MANEUVERS: THE INTERNATIONAL POLITICS OF MILITARIZING WOMEN’S LIVES* 32–34 (2000).

^{99.} See AYSE GUL ALTINAY, *THE MYTH OF THE MILITARY-NATION: MILITARISM, GENDER, AND EDUCATION IN TURKEY* 90–99 (2004).

^{100.} See Generally SUPERMAN SUPREME: FASCIST BODY AS POLITICAL ICON (A. Mangan ed., 2000).

with identified disabilities,¹⁰¹ as they may also/often exclude females or queer people, and in some instances, various racial or ethnic populations. The archetypal military man is a kind of model or paragon of a person without even the slightest taint of disability or incapability—a force least likely to succumb to disablement at the hands of the enemy, and most capable of successfully breaking or crippling the presumed dangerous enemies at hand. To those who are familiar with veteran populations, this construct is likely to be painfully ironic, given the many medical, psychiatric, toxic, and long-term consequences of soldiering,¹⁰² and highlights

^{101.} It is important to qualify that while certainly there are instances where particular disabilities are incompatible with some of the demands of military combat, akin to the idea of “direct threat” in disability employment law (Title I of the ADA frames this concept, see Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12111–213 (2000)), I also contend that people with identified disabilities are often routinely excluded from positions where there is no inherent conflict between the disability and qualification, and from noncombat roles. See Military Entrance Processing Station (MEPS) Regulation 40–1, available at <http://www.mepcom.army.mil/publications/ Documents/Regulations/r-0040-00 1.pdf>; Department of Defense (DOD) Directive 6130.3–4, available at <http://www.cs.amedd.army.mil> (enter “Directive” in search box); see also Meekosha, supra note 17, for acknowledgement of disability based exclusion in the Australian military.

^{102.} See generally VOICES FROM THE EDGE: NARRATIVES ABOUT THE AMERICANS WITH DISABILITIES ACT (Rogers M. Smith & Ruth O’Brien eds., 2004) [hereinafter O’Brien].

Martha Fineman's contention that vulnerability should be recognized as an inherent human condition.¹⁰³ The "Super Man"/soldier icon reveals an ideological structure reliant on notions of disability and disablement as the vehicle, expression, and marker of domination.

It would be premature to make comprehensive claims about all the directions in which an intersectional Critical Race/Disability scholarship may take. All the more so, when feminist, queer, class-conscious theories and frameworks, and the narratives and priorities of various populations are factored into the discussion. That said, the three broad parameters outlined here are inarguably relevant, particularly in the context of contemporary global and military systems, which are continually breaking and damaging bodies en masse. Critical Race/Disability Theory is necessarily intersectional, and not simply in comprehending the intersectionality of experience or of legal access or subjectivity. It also has the potential and imperative to scrutinize the origins and ideological co-constitution of disability and race, to recognize the symbiosis between racism and ableism as institutional practices, and to attend to identity construction and communality, as potentially transformative sites of struggle. Further, a critical approach to racism and ableism necessitates a certain flexibility of perspective. Conceptualizing advocacy that can realistically challenge patterns of systemic disablement is both urgent and daunting, given its location in entrenched, intersecting dynamics of subordination. That is, disablement is deeply embedded in capitalism, imperialism and White supremacy, and reliant on the

¹⁰³. Fineman, supra note 69.

sustained (often extreme) vulnerability of the disabled and the (racial, gendered, economic, youth, and sexual) targets of physical and psychological damage.

Again, this is not to suggest that doctrinal questions of equal protection or advocacy grounded in rights discourse can or should be abandoned. Rather, the limitations of contemporary legal framing must be clearly highlighted as precursors either to a reframing of equality or rights, or the invention of a new basis for legal claims making. Finally, Critical Race/Disability Theory faces the daunting challenge of comprehending, naming and articulating resistance to the role of Western imperialism (inclusive of both U.S. domestic White supremacy, and transnational political, economic, social, and military imperialism) in dictating what disability, illness, and damage mean, and in enforcing domination through disablement.

IV. REPRESENTATION AND EXPERIENCE

Much of the focus of this paper is on disability as a social institution, and on disablement (or the creation of emergent disabilities) as an institutional practice. However, as noted in the previous section, attention to identity construction and individual and collective experience serves multiple potential functions. First, as already stated, individual and communal negotiations of disability/race can potentially reveal and embody powerful resistance to the ideological mainstays of ableism and White supremacy. Second, one of the more valuable (and controversial) methods that Critical Race Theorists employ in producing legal knowledge

is narrative.¹⁰⁴ The controversy of employing narrative in law is in part more specific than methodological debates about validity and interpretation across disciplines. Western legal traditions evince an emphasis on the solidity of knowledge and the power and verifiable validity of science in enforcing legal rules and tests.¹⁰⁵ While testimony, affidavits and depositions occupy an indisputable procedural place in legal process, these processes (excepting expert testimony) represent a different category of knowledge than the presumably robust and somewhat mystified practices that constitute legally relevant medicine and science. To assert that narrative and lived experience are in themselves “evidence,” not just of individual facts or interpretative stances, but of systemic social realities, challenges the foundations of objectivity and individualism which undergird Western legal traditions.¹⁰⁶ As many Critical Race Theorists have argued or illustrated, narrative is often the beginning place in shifting disciplines and doctrines, which have structurally and ideologically erased threatening, subordinated, or marginal perspectives.¹⁰⁷ Or as the poet

^{104.} Matsuda, supra note 49.

^{105.} See generally CAROL SMART, FEMINISM & THE POWER OF LAW (1989).

^{106.} Id.

^{107.} See Matsuda, supra note 49; see also Clevis Headley, Black Studies, Race, and Critical Race Theory: A Narrative Deconstruction of Law, in A COMPANION TO AFRICAN-AMERICAN STUDIES 331 (Lewis R. Gordon & Jane Anna Gordon eds., 2005); Richard Delgado & Jean Stefancic, Legal Storytelling & Narrative Analysis, in CRITICAL RACE THEORY: AN INTRODUCTION 37–50 (2001); RACE LAW STORIES (Devon Carbado & Rachel Moran eds.,

Mariahadessa Ekere Tallie puts it, commitment to narrative can be understood as “writing despite the facts, to create new ones.”¹⁰⁸

My objective in this paper is not to explicitly introduce individual narratives about disability and race. However, as noted in the introduction, the analyses and themes in this paper are partially the outgrowth of my participation in a Disability Studies Reading Group, located within the Critical Race Studies Program at the UCLA School of Law, during 2006–2007.¹⁰⁹ Through repeated integration of life experience into existing theoretical frameworks, and vice versa, the reading group identified a number of linkages between existing and relatively disparate Critical Race and Critical Disability literatures (many of which are discussed herein). We also sponsored or participated in a few small communal discussions with interested people with disabilities, which allowed for dialogue not limited to the participants of the study group.¹¹⁰ There were moments, both within the study group and during subsequent or parallel discussions, where life stories and experiences transcended the conceptual or current explanatory limits of either literature, particularly given how little work has been done at the intersections. Some of these

2008); Nancy Levit & Allen Rostron, Calling for Stories, 75 U. MISSOURI AT KANSAS CITY L. REV. 1127 (2007).

¹⁰⁸. Mariahadessa Ekere Tallie, *Sinister Wisdom* #47.

¹⁰⁹. See supra note 8.

¹¹⁰. In particular, a conversation on “Racism in/and Disability Communities” in Spring of 2007, stimulated intense dialogue about disability intersectionality, trauma, and silenced identities.

experiences are at least tentatively or implicitly hinted at in the previous section. My task here however, is to outline some of the themes that emerge when people with disabilities and People of Color (and particularly, though not always exclusively, people in both demographics) are explicitly able to talk about identity, racism, and ableism. My comments about narrative and methodology here are not meant to be exclusively prescriptive—these themes can certainly also be productively developed through a range of methodologies. Although I think a more robust empirical project (and commitment to oral history and narrative methodologies across disciplines) engaging the issues I delineate here is called for, I make no claims to an intentional or even initial/accidental ethnographic or observational project here. The following points are anecdotally generated notes intended as a research stimulus and as a means to record some of the insights produced through collective study and communal dialogue. I am intentionally not attempting to systematically review existing literature or documents in the discussion that follows; my discussion is a synthesis of collective dialogue. While some insights and themes resonate well with existing critical literatures, others only partially overlap, or as noted, reflect communal knowledge not yet fully embodied within scholarship.

A. Disability, Culture, and Definition

While it is presumptive within Disability Studies—and some areas of the social sciences and humanities—that disability is a social construct, the role of race, culture and imperialism in defining disability meanings is underexplored. As noted earlier, the question of White supremacist

and imperial ideals as a foundation for physical and cognitive norms is certainly a critical subtopic. Many conversations about the social construction of disability attend minimally, if at all, to racial meaning. Where race is surfaced, excepting eugenics analysis, a common focus is on the interplay of racist and ableist stereotypes, or cultural differences in the interpretation and negotiation of disability.¹¹¹

However, these insights can be pushed to acknowledge several dynamics. First, the tenets of Western medicine and science, which stigmatize and pathologize a wide range of cognitive differences as disease or mental illness,¹¹² can have culturally specific, colonial, racist consequences, where the colonization process turns a previously culturally acceptable variation or even a spiritually honored way of being into a contemptible and intolerable defect. Recognizing not only that one is suffering from the consequences of ableism, but also that White society has imposed the racially charged stigma of disease to begin with, intensifies and complicates the intersection of racism and ableism, as well as the construction of any kind of politicized disability identity or “disability pride.”

Second, in community discussions of what it is like to be a disabled child, it also becomes very dear that Children of Color with disabilities are often placed in an exceptionally precarious and vulnerable position, on the one hand having to bear compounded and intersectional stigma while on the other hand, being much less likely to secure healthcare or

^{111.} See, e.g., AHMAD 2, supra note 46.

^{112.} See CONRAD, supra note 40.

educational rights which are (sometimes) available to disabled children. Disability is more purely (as compared to White, economically privileged disabled children) a source of shame rather than a basis for rights, and further a flaw which can be wielded or pinpointed by educators, medical professionals, and social workers to shame and embarrass communities and families for producing “disruptive,” “deficient,” or “problem” children. While parents with educational, economic, and racial privilege are more easily positioned to learn to use law or negotiate medicine in defense of their disabled children (though not all do so), Communities of Color not only have less legal and institutional access, but are also more likely to be subject to invasive state intervention in the family (i.e., via public/child welfare agencies).

In the best case scenarios, parents may still develop an organic race-conscious, class-conscious and disability rights oriented framework to advocate for disabled Children of Color, but the advocacy occurs in spite of, and in constant contradiction to, most of the resources and structures that govern family interactions with the state and its institutions. In the worst-case scenarios, disabled Children of Color are ignored or scapegoated and left vulnerable to intra- and extrafamilial abuse for supposedly embodying racially loaded stereotypical traits such as “laziness,” “troublemaking,” oddity or deviance. The impact of communal internalized racism on disabled Children of Color is particularly vicious, and absent any disability consciousness (or often, even recognition that disability is present at all, as diagnosis may be later in life), disabled Children of Color can be forced to inhabit the position of racial failure with predictable psychological and social consequences.

It bears noting here that disability itself, not just demographics like race, gender, class, sexuality, age, and citizenship, can produce more emergent disability. A child may begin with or be perceived as having a learning disability for instance (or may develop one as a cognitive consequence of sustained malnutrition in poverty), but the communal, educational, and structural reactions to disability, particularly when exacerbated by classism, racism, and sexism may generate disabling degrees of depression or posttraumatic stress by the time the child is fully grown. In this sense, disability functions both as a production and dynamic particularly inextricable from an overall experience of cultural and racial shame or “otherness,” and as a basis for exponential and compounded embodiment of damage.

B. Intelligence, Capability, and the Right of Access

Although disability rights movements are very acutely aware of some of the overarching dynamics and questions which attend the right of access to education and employment, it is not at all unusual, either in communal discourse or disability scholarship, to carry on dialogue about competency, qualification, intelligence or entitlement with absolutely no recognition that these concepts are racially signified and loaded. It is in fact more common to see disability scholars make comparative analogies between disability civil rights and racial civil rights in occupational and educational contexts while never acknowledging that the two areas of law can or should merge or generate intersectional claims.¹¹³ Nevertheless,

¹¹³. See, e.g., Ruth Colker, *The Disability Integration Presumption: Thirty Years Later*, 154 U. PA. L. REV. 789 (2006).

communal dialogue about the right to learn and work reveals the constant and substantive presence of race in the interpretation of disability.

Put simply, White people can navigate and acknowledge ableism without having to confront or think about whether disability implicates racial legitimacy or constitutes a broader (ethnoracial) cultural assault. Although White people with disabilities are certainly subject to ableism, the interaction between White privilege and ableism has specific consequences. White privilege, at least, does not exacerbate ableism, in the sense that race is not always acknowledged or brought (negatively) into play in the interpretation of requests for access or evaluation of competency or qualification. Additionally, White privilege may mediate or mitigate some aspects of ableism by reinforcing the sense that a person with a disability is essentially normal, entitled, and deserving of institutional access because disability is just a singular deviation¹¹⁴ from an otherwise dominant and normative demographic template.

In contrast, the presence of People of Color, particularly in relatively elite or privileged occupations or educational contexts, is reflexively (though not always openly) subject to question. Ongoing challenges to and rollbacks of affirmative action programs in a number of U.S. states serve to intensify the climate of scrutiny in which People of Color are expected to perform, and in which the performances are interpreted.¹¹⁵ In

¹¹⁴. This assertion is complicated at least, when White disabled people are also navigating gender, sexual, age, ethnic, or religious subordination.

¹¹⁵. Kimberlé W. Crenshaw, Framing Affirmative Action, 105 MICH. L. REV. FIRST IMPRESSIONS 123, 131 (2007) [hereinafter Crenshaw 2]; see also

dialogue about the intersectional consequences of this climate for People of Color with disabilities, a number of dynamics become visible.

1. Hyperperformance

As a strategy to navigate the presumption of (racial) deficit, it is not uncommon for People of Color to “over-perform” in the sense of committing extra resources, honed skills, and extraordinary commitment in order to excel in hostile structures, and in the process negate or “disprove” racial mythologies. This dynamic is similarly in play for people with disabilities, and it accompanies a set of cultural messages about transcending limits and boundaries, and in a sense, defying limitation or disability by proving extraordinary capacity in various ways. Predictably, the two parallel dynamics fuse for People of Color with disabilities, creating an extraordinary pressure to be better, stronger, smarter, more effective, flawlessly capable, and apparently unharmed or immune to the strain of hyperfunctioning in structures that are psychologically and/or physically hostile. While some manage to embody this strategy very powerfully, the expectation is particularly grueling and often made virtually impossible by the realities of inaccessibility, or in some instances by costs to health and well being. Rather than acknowledging the extraordinary barriers and limitations imposed by institutions, the expectation of hyperperformance can also lend itself to a continual sense of failure

social psychological literatures on “stereotype threat,” such as, Claude Steele & J. Aronson, Stereotype Threat and the Test Performance of Academically Successful African Americans, in THE BLACK-WHITE TEST SCORE GAP 402 (Christopher Jencks & Meredith Phillips eds., 1998).

and inadequacy. This sense of failure is not solely an experience of personal deficit, but of having failed and failed with one's communities by not successfully fighting off the stigma of racialized ableism/ableist racism. The particular vulnerability of People of Color with disabilities to this intersectional pressure is often not fully acknowledged either in disability communities or Communities of Color; those who cannot "cut it" are not understood as threatened, disadvantaged or particularly assailed, in terms cognizant of intersectional subordinating dynamics. This in turn ensures that there will likely be no holistic collective response or mobilization.

2. Accommodation and Shame

Given the expectation of hyperperformance, the process of having to secure disability accommodations can become a kind of ritualistic or symbolic moment in which racial "failure" is acted out in negotiations with administrators or supervisors. Answering racial mythologies of incompetence requires that the worker or student of color be completely without need, deficit or vulnerability to anything that could impair success. Although disability civil rights laws require at least a superficial conception of accommodation as legitimate and not a signifier of poor qualification, ableist mythologies equate the need for accommodation with lack of inherent qualification, burdensome need, and inferior performance.¹¹⁶ The request for disability accommodation then, or even the

¹¹⁶. Although statutes such as the Americans with Disabilities Act and the Rehabilitation Act employ conceptions of qualification which ostensibly do not presuppose an equation between disability and incompetence,

recognition that one is struggling without it, can feel like a kind of surrender or defeat reinforced and constituted within the mechanisms of institutionalized racism. People of Color with disabilities then must face the untenable choice: do without a resource that is needed for success and access or seek it out through channels that in themselves signal failure. No option is without stress or psychological strain, which can compound the experience of inadequacy or not being able to cope with the expectations of the institution.

It also bears noting that while accommodation negotiations are not without strain for White people with disabilities (as ableism even when mediated by White privilege can make an environment very hostile), the high costs of confronting ableism/racism also can ensure that White people will be, at least in some contexts, more likely to seek out

the interpretation of “reasonable” accommodation, and the legal processes and struggles surrounding the term also simultaneously can reinforce the message that substantial expense, marked differences between disabled employees or individuals and others, and challenges to the structure and character of the institution can all indicate a lack of qualification. At best, a disabled person **may** be qualified, **may** be entitled—and the courts must then identify the truly worthy. I suggest that disability, as a legal construct, always also indicate that a person is suspect of incompetence, lack of qualification, or unreasonableness. See Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12111–213 (2000); see also The Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq.; O’Brien, supra note 102.

and successfully secure accommodations. The latter is true particularly when people in institutional power assess the validity of disability, accommodation and need in terms mediated by both racism and ableism. To illustrate the point: a White person's accommodation request is more likely to be read as simply about disability; a Person of Color's accommodation request may be read as a "scam" or an attempt to cover a personal/racial deficit. Where, for instance, cognitive or learning disabilities coexist with an immigrant's English language acquisition process, this presumption is particularly insidious (i.e., "you don't really deserve accommodation; you're just not a good English speaker (and not a good American)"). The intersectional dynamic again is critical here: some People of Color succeed, some people with disabilities succeed, therefore the recognition that People of Color with disabilities may be thoroughly barred by the interaction between racism and ableism isn't recognized, both within the formal structures of the institution, and often even within the communities struggling to maintain access. When People of Color with disabilities are singled out to receive the message "**you** don't belong here," it is not clearly understood as racism because it is attributable to a supposed personal medical or psychological flaw (which a disabled individual may not be visible or public about in broader Communities of Color). At the same time, it is not clearly understood as ableism because other (White) people with disabilities are not encountering the same degree of opposition.

3. Escalating Inaccessibility

It is also critical to recognize that for People of Color who have had disabilities over significant time periods, the effects of prolonged deprivations, underaccommodation, and racial/ableist hostilities create compounded problems. By the time adults with disabilities who are able to work enter the labor force, race, class, and gender dynamics will likely have created a vastly varied range of disability identities and relationships to accommodation. Without explicating this point comprehensively, and by way of illustration, it is helpful to contrast the experience of a disabled child who either never received diagnostic attention or educational support (a dynamic disproportionately true for some Children of Color) or a disabled child for whom “special education” was code for racialized educational tracking, with a disabled child who has had time to develop a relationship to disability identity which betokens some element of entitlement and an expectation of at least minimal, functional accommodation. Although there are no monolithic experiential templates, the likelihood of either underdiagnosis or punitive “accommodation” which accompany racial and class stratification¹¹⁷ increases the chance that People of Color with disabilities will have lowered expectations about the right to and quality of access and accommodation, and will be positioned to be less capable of self-advocacy, or as noted, to even seek needed accommodations at all. Of course, people with disabilities can be empowered self-advocates. In fact, the imperatives of surviving the combined dynamics of racism and ableism (often interacting with classism and sexism)

¹¹⁷. See Ferri, supra note 47, at 457.

may propel some to develop a particularly sharp and varied repertoire of confrontation and negotiation skills, precisely despite these obstacles. Nonetheless, the racial politics that mediate disability and entitlement cannot be underestimated in terms of their impact on the expectation of access and on the degree to which denial of accommodation or accessible education may have impacted development of economically marketable or valued skills.

4. Visibility and Whiteness

All of these combined dynamics create a context wherein People of Color with disabilities are disproportionately set up to fail, and at the same time where the recognized models of disability success (to the extent that some are present, which is never a given) are likely to be White. For the majority of people with disabilities who can “pass” or mask disability, there are always complex choices about disclosure and identity, but the racially charged perils of acknowledging disability create a dynamic in which those who get into elite institutions will be less likely to disclose, if disability is not coupled with White privilege. In a sense, the charge of racial inferiority is a presumptive accusation of disability—actual disability must be hidden or its admission is akin to a racial surrender. The consequence is that People of Color with disabilities are unavoidably socially “visible” in contexts that indicate extreme marginality and subordination—in homeless populations, for instance—while remaining “invisible” in contexts that are indicative of success or institutional access. This dynamic creates a public face of comparatively positive disability that is disproportionately White, despite the reality that intersecting

dynamics of subordination make at least some forms of disablement a greater likelihood for People of Color.

C. Normalcy, Silence and Grief

The dynamics of stigma and disability as they implicate race serve to create intolerable pressures on People of Color with disabilities (whether disability is “hidden” or obvious). When disability is “hidden,” it can create a kind of identity “closet” that parallels (and sometimes intersects with) the kind of closeting usually framed relative to sexual identities, or can constitute a process of passing or “covering” parallel to (and sometimes intersecting with) racial identities.¹¹⁸ Disability as a secret intensifies the internalization of racial shame—i.e., there is something (disabled) wrong in body, mind, and/or psyche that cannot be acknowledged—an orientation which negates the possibility of combating the message that one’s (racial) body/mind/psyche is abnormal, defective, and socially unacceptable. This interaction is particularly toxic when the origin of disability is embedded in an experience of subordination.

For People of Color with (“hidden”) emergent disabilities, the consequence of experiencing racism, sexism, classism, child abuse, or interrelated traumas is some variation of medical or psychological damage, which (a) becomes a secret embarrassment, (b) makes it more difficult to succeed, function, or navigate the world, and (c) “proves” various mythologies of inferiority. In other words, racism creates damage, which then must be hidden, for fear that it will be held up as inherent/

¹¹⁸. For an introduction of the theory of “covering,” see KENJI YOSHINO, *COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS* 125 (2007).

personal proof of racial inferiority or unworthiness. The price of performing normalcy (for those who can, to whatever degree) is a suppression of recognition of the embodied harms of subordination, often within one's primary political and cultural communities. It should also be acknowledged that People of Color with disabilities that cannot be hidden are left in an extraordinarily exposed position, bearing the intersectional stigma for whole communities in at least apparent near-isolation. Communal silence about disability locates the grief and pain of disablement via subordination in individual/personal problems and deficits, rather than allowing for collective mourning, rage, and the prospect of effective mobilization or cooperative healing and adaptation.

The three themes described here stimulate a practical/organizing question: Who's physical, cultural, emotional, and cognitive realities surface and acquire traction in the constitution of communities, rights advocacy and collective identities? The answer is fairly evident. Where disability is misperceived as disproportionately a White experience (except when coupled with extreme poverty and related social stigma), the specific types of ableism experienced by People of Color are likely to be poorly recognized, inadequately comprehended, and inevitably unchecked and unchallenged.

V. THE PURPOSE AND USES OF DISABILITY IN THE SERVICE OF WHITE SUPREMACY

In turning to the fourth topical question posed in this paper, I am also revisiting the themes of the previous three. My underlying agenda here is to synthesize an argument about the relevance, and at moments

the centrality of disability in generating meaningful Critical Race praxis across a range of topics and areas. My purpose is also to highlight the urgency of formulating disability scholarship and advocacy in terms that are race-conscious and particularly in sync with some aspects of feminist Critical Race frameworks.¹¹⁹ To state the question again, in this Part I am asking: Does disability serve particular functions or reveal certain dynamics within White supremacy?

As outlined in the first section, the meanings of race and disability in Western societies are co-constituted. Race, as a category grounded in notions of physical, cognitive, moral deficit, and defect, reinforces and relies on a construct of White, European bodies and minds as normal, healthy, and reflecting a more complete or idealized evolution/civilization. Disability in turn serves as a catch-all for everything else: disruptions to White ideals in need of explanation, mass medicalized and eugenic

¹¹⁹. See McClain, supra note 48, where the author notes the intersection of gender, race, and disability in traumatizing and damaging female bodies. Meekosha & Dowse, supra note 17, echo this point as well, in confronting gendered disablement of refugees in the context of imperialism and warfare. Although disability is still an underdeveloped theme within Critical Race Feminisms, it is already anticipated in conversations about bodily integrity and medical intervention. See DOROTHY ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* 4 (1998); ADRIEN WING, *CRITICAL RACE FEMINISM: A READER* (2003) & *GLOBAL CRITICAL RACE FEMINISM: AN INTERNATIONAL READER* 1 (2000).

constructions of racialized bodies as diseased or deformed,¹²⁰ and at a base level, a naturalized and hegemonic template for dichotomy—the normal versus the disabled.¹²¹ This construct establishes a basis for physical, cognitive, and psychological hierarchy, which then enables racial codification in the terrain of deviance, abnormality, and disease. It is important to acknowledge that disability stigma can work against Communities of Color solely based on the medicalization of racial deviance, although it operates as well where impairments, injuries, or illness are an experiential reality.¹²² The disabled/defeated collective other can then be assailed or disciplined in a range of racial contexts which affirm White, Western dominance and supremacy, whether through overt warfare or a range of “everyday” institutional practices in areas like work and education.

As noted in the prior sections, an analysis of disablement or emergent disability is particularly critical to any kind of race-conscious critical

^{120.} See Dorr, supra note 17 at 1.

^{121.} See Davis, supra note 10.

^{122.} In thinking about this point, it is useful to contemplate the breadth of diagnoses present in the American Psychiatric Association’s Diagnostic and Statistical Manual, most notably including “Gang Behavior Related Disorder,” a clinical term applied almost exclusively to urban youth of color. See generally AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (4th ed. 2000); HANDBOOK OF ADOLESCENT BEHAVIORAL PROBLEMS: EVIDENCE BASED APPROACHES TO PREVENTION AND TREATMENT (Thomas P. Gullotta & Gerald R. Adams eds., 2005).

disability framing because it surfaces the reality that disability is not simply racially charged, but often racially generated. To make the crux of this point more clear—ableism serves a particularly intense racist function by ensuring that People of Color who are injured, impaired or sickened in White supremacist contexts will be immersed in messages that (a) depoliticize the context of harm (i.e., it is a personal flaw, problem, defect), (b) stigmatize the injury or harm as shameful or indicative of worthlessness or lack of credibility, and (c) naturalize exclusion from a wide range of structures and institutions (or subordinated roles within those institutions) as justifiable based on the disability/defect. Further, the practical and lived realities of disability subordination play an economic and social role in degenerating survival, longevity, and mobility by ensuring that communities struggling to survive and challenging White supremacy are collectively “crippled.” Injured communities are kept extraordinarily busy overcoming damage and engaging crisis, and remain practically and disproportionately at the margins of institutions and resources that might enable challenges to the state,¹²³ and even from communal and grassroots resources which are not equipped or structured to enable the full

¹²³. Devon Carbado’s critical analysis of race and marginality discourse is important to acknowledge here. Applying his work to disability, the central point is that while marginalization from centers of power and from elite spaces is still descriptive of (racialized) disability, the idea of disabled/damaged “others” can also be understood as central to notions of ideal bodies, hierarchy, and disability subordination. See Devon Carbado, Racial Naturalization, 57 AM. Q. 633,637 (2005).

participation of people with disabilities. Where disability is the naturalized, medical, inherent, and recognized reason for these systematic patterns, and is understood as distinct from race, recognition of race, and racism as political culprits in the social script of subordination and failure at least partially disappears.

Disability rights, in turn, need to be understood as either the totality or at least the primary substance of the legal and political rights a state affords to people who have been disabled by violence and subordination. Though of course emergent disability is a subset of the broader category of “disabilities,” the brutalities of heteropatriarchy, globalization, contemporary capitalism, domestic White supremacy, and transnational imperialism ensure the question of violent disablement is pressing both in terms of the range and extremes of deprivation and suffering, and in terms of sheer numbers of affected populations. Disability is “about” race both because of disproportionate disablement based on race (intersecting with class, age, gender, citizenship, and sexuality),¹²⁴ and because the interaction between racism and ableism creates an intersectional experience that reinforces certain dynamics of White supremacy. Disability is visibly “raced” both in the moments when People of Color are particularly on display as damaged racial others, and in the continual construction of most positive models of disability as White.¹²⁵ However, disability rights are virtually never considered in terms that are explicitly about race,

^{124.} See Poverty, supra note 7, at 427.

^{125.} See Bell, supra note 46.

race-conscious, or where the question of whether disability rights are presumptively “race-neutral” is even acknowledged.

What legal claims and expectations constitute disability rights is a complex discussion in itself, and implicates both civil rights equal protection models and a range of policies and systems within the welfare state. But focusing just on disability civil rights as embodied in domestic statutes such as the Americans with Disabilities Act,¹²⁶ or transnationally through the United Nations Convention on the Rights of Persons with Disabilities,¹²⁷ I contend that the conception of disability rights—while certainly not only applicable to White people—reflects a baseline conception of disability and equity which does not account for or tackle the consequences of emergent disability as a racial, economic, gender, or sexual production. The primary conception of disability civil rights based on nondiscrimination principles assumes that the fundamental claim people with disabilities should have on the state is the right to access and accommodation, framed in terms of a balancing test between the social and economic burden or cost of letting disabled people into social institutions, and the social, personal, and economic consequences of keeping disabled people out. The idea that disability rights might also entail some broader state or specific institutional accountability for

^{126.} See generally Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12111–213 (2000).

^{127.} See generally United Nations Convention on the Rights of Persons with Disabilities, supra note 25.

causing or exacerbating disability is outside the scope of contemporary disability rights, or even the contemplation of what degree of access is “reasonable.”

The economic, material, and medical needs associated with disabilities are within the terrain of disability welfare law and policy, but the premise is that the state is a steward of resources which may be a qualified entitlement based on citizenship or residency (though a limited one, in most instances)¹²⁸ but are not owed based on state action or state-perpetrated harm. In other words, cognizable disability rights are for the most part entirely separated from any concept of reparation, or more broadly, race-, gender- or class-conscious remedy. If disability were somehow not a stratified and disproportionate phenomenon, and if its consequences once present were not demographically specific, we might imagine nondiscrimination and welfare paradigms as a more sensible, comprehensive template for conceiving of disability rights (though still open to critique). In that case, there would be less need to consider the origin of disability in contemplating how the state should respond to it, and the consequences of ignoring origin would not have disparate impact. However, as it is, without a conscious recognition of the intersectionality of race, disability, gender, class and sexuality, and without acknowledgement of the specificity of emergent disability, disability rights are only conceivably fully responsive to individuals with

¹²⁸. See WALTER I. TRATFNER, FROM POOR LAW TO WELFARE STATE: A HISTORY OF SOCIAL WELFARE IN AMERICA 20 (5th ed., 1998); TERESA L. AMORT, ET AL., WOMEN, THE STATE & WELFARE 291 (Linda Gordon ed., 1990).

disabilities who are not the targets of other dynamics of subordination and whose disabilities are the product of random circumstance or normative aging processes.

To make this argument less abstract, disability civil rights frameworks are most dearly geared towards someone like “Superman,” a.k.a. the actor Christopher Reeve, who became a public disability icon after a horseback riding accident left him quadriplegic. The image of a disabled “Superman” can be understood as one who falls from the status of embodying an ideal point in a complex social hierarchy, by becoming disabled.¹²⁹ Neither the U.S. government nor a symbolic or subordinating supervillain is responsible for his new vulnerability. Rather, his needs relate to individual social acceptance and physical access unmediated by economic desperation, invisibility, socially inflicted trauma, or a context of communal assault—Superman in a wheelchair is the ideal recipient of the rights embodied or at least hinted at in the ADA.¹³⁰ However, when disability is a violent or exploitative consequence of subordination, the question of “rights” is not just about the right not to be discriminated against on the basis of disability; the existence of disability is already an indication that human rights have been substantially violated.

^{129.} For a discussion of the role of Christopher Reeve in popular disability discourse, see MARY JOHNSON, *MAKE THEM GO AWAY: CLINT EASTWOOD, CHRISTOPHER REEVE AND THE CASE AGAINST DISABILITY RIGHTS* (2003).

^{130.} See generally Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12111–213 (2000).

While a disability may be the consequence of a concrete and discrete act by a specific actor, as already noted it just as likely will reflect the combination of prolonged harm by multiple institutions and actors—none of whom are singularly culpable, and many of whom will not be present and capable of being held legally accountable by the time disability manifests and is named as such.¹³¹ In this context, a responsive conception of “disability rights” may be as much a collective **need** as an individual need (wherein communal and familial needs include resources that may be used to mitigate or manage collective harm), and may go far beyond the presumed burden that a supposedly detached state actor has to “accommodate.” Contrast, for instance, the legal burden of an employer to make a workplace accessible to a person with (preexisting) disability¹³² with the limited legal restrictions on a multinational corporation that routinely hires young people to work in extremely exploitative, physically hazardous, grueling conditions (such as sweatshop labor) and fires them as soon as their bodies break down to the point of decreased “efficiency.” The

^{131.} Statutes of limitation alone pose a substantial barrier to many prospects for disability litigation on this issue. Given that the disabling consequences of violence may play out in communities and families over generations, nothing short of reparations claims gets to the heart of the problem, and of course Critical Race Theorists note the difficulty in securing reparations. See generally Bernie D. Jones, When Critical Race Theory Meets Legal History, 8 *RUTGERS RACE & L. REV.* 1 (2006).

^{132.} See generally Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12111–213 (2000).

experience of discriminatory termination in this instance is totally inseparable from the initial production of disability, and in fact, even if the termination were legally disallowed, this action alone would do nothing to remedy the fact that the conditions of work are disabling, or more pointedly, that no alternate economic resources and opportunities exist. The notable point here is that there is no “disability right” to not be broken and thrown away, to work without systemic and severe harm, expediting mortality in order to survive the immediate moment. Disability civil and welfare rights enter the picture only after individuals and communities have already been turned into disposable commodities.

There are various areas of criminal law, labor law, international human rights law, and torts law that can be accessed (at least by some) in order to try to address harm to the body and/or psyche by holding a state, institution, or party responsible. However, even if they were all functioning effectively in the service of people subject to subordination, my point here is that the conditions that engender and signify disability require a much deeper conception of state and institutional responsibility and obligation. Acknowledgement of these conditions would profoundly shift the “burden” to create access, meet individual needs, and reshape the social world in response to the existence of disabilities. Rather than understanding people with disabilities as burdening society, taxpayers, employers or institutions, people with disabilities should be understood as already burdened by subordination, and certainly by ableism,¹³³ and

¹³³. This point is commonly recognized within disability studies; my critique here is that the burden on disabled people imposed by racism and

for the purposes of this discussion, by the intersectional production of emergent disabilities stemming from multiple forms of subordination. In this alternate frame, much of what we understand as “accommodation” is a very minimal remedy addressing structural hostility and inaccessibility to already injured and abused populations. Disability accommodation is not an enactment of “nondiscrimination,” but a partial and conceptually limited and individualized remedial reaction to massive and collective experiences of subordination. “Welfare” is not a benevolent social dispensation, but the fragmented and grudging allotment of reparation for injuries rooted in intersecting dynamics of racial, economic, age, ethnic, religious, sexual, and gender subordination. It postdates and accompanies the processes by which communities are not just denied economic rights or opportunities, but are also stripped of physical and psychological wellbeing that could make those opportunities sustainable or meaningful.

Returning to the formative question, contemporary disability rights discourse, as embodied in mainstream social movement organizations, and much of disability studies, lacks a comprehensive and race-conscious critique of the politics of emergent disabilities and disablement, or even a thoughtful commitment to intersectional analyses of identity. “Disability” as it is commonly understood in even critically conscious or progressive disability communities reinforces the treatment of individual physical, cognitive, and psychological damage as a phenomenon largely separable from other collective experiences of subordination and the

related subordinating dynamics other than ableism and sometimes poverty are underacknowledged.

broader dynamics of White supremacy. Though the state is challenged by disability rights movements for sustaining ableism and for continuing to abuse and deprive people with disabilities,¹³⁴ an enormous aspect of state action and culpability is simultaneously erased. There is, as yet, no sustained critical discourse that acknowledges the collective disablement of subordinated populations, and particularly Communities of Color,¹³⁵ as a figurative, legal, and fully embodied reality in which it is possible to acknowledge that people are “disabled by White supremacy.”

Some of this omission has to be understood as a consequence of the disability rights movement’s conceptions of pride and rejection of medical

^{134.} See Davis, supra note 10.

^{135.} It should certainly be acknowledged again that scholars in arenas such as public health and medicine who are confronting the link between race, poverty, and illness are making an important and urgently needed contribution to the prospective development of this discourse. See, e.g., Bailus Walker, Vickie M. Mays & Reuban Warren, The Changing Landscape for the Elimination of Racial/Ethnic Health Status Disparities, 15 J. OF HEALTH CARE FOR THE POOR AND UNDERSERVED 506, 507 (2004); RACE & RESEARCH: PERSPECTIVES ON MINORITY PARTICIPATION IN HEALTH STUDIES (Bet-tina M. Beech & Maurine Goodman eds., 2004). My point here is that this element of the discussion has not yet been substantively expanded across disciplines or incorporated into existing areas of critical theories, or generally into disability studies in order to create a race-, gender-, class-, and sexuality-conscious analysis of subordination and disability/disablement.

models of disability.¹³⁶ The relentless treatment of disability as a basis for pity, contempt, or “benevolent” paternalistic domination in U.S. society has generated a strong intra-movement rejection of the premise that anything about disability as it is located in bodies and minds is inherently negative and a frequent insistence on locating all harm in structural discrimination and social bias embodied in the notion that prejudice is the only real disability.¹³⁷ The reactive framing of disabilities as a basis for pride, based on the universalizing premise that disability itself is at least benign or even positive, creates cognitive dissonance. Disability is already such a legally and socially expansive category and, in law and policy, is inclusive of a range of diseases and illnesses, which contradict the notion that the embodied experience of disability is never negative.¹³⁸ As historian Paul Longmore notes, part of the dilemma in conceiving disability is that the idea of disability community is a relatively recent

^{136.} See generally JOSEPH P. SHAPIRO, *NO PITY: PEOPLE WITH DISABILITIES FORGING A NEW CIVIL RIGHTS MOVEMENT* 254 (1994).

^{137.} See generally JENNY MORRIS, *PRIDE AGAINST PREJUDICE: TRANSFORMING ATTITUDES TO DISABILITY* (1993).

^{138.} This is particularly true since the recent amendment of the Americans with Disabilities Act, which substantially expands recognition of a variety of forms of chronic and recurrent illness as legally cognizable disabilities. See generally The ADA Amendments Act of 2008, 42 USC § 12103, 12205a (2008).

historical invention, in which the disparate and extraordinarily varied experiences of disability are often only partially acknowledged.¹³⁹

However, discussions of disablement or emergent disability are particularly threatening to this paradigm because they emphasize recognition of disability as a wrong or tragedy on at least two bases: (a) its lived experience, and (b) its origin in experiences of force, violence, or exploitation. The challenge for Critical Disability/Race Theory is not small, conceptually or practically—how to acknowledge disability as very frequently deeply negative, and disablement as genuinely tragic and horrifying, without reinforcing the already relentless message that disability represents inferiority, is pathetic and worthless. Though I proffer no comprehensive answer in this initial discussion, I note that a race-conscious intersectional analysis does not have to negate conceptions of pride or collapse into objectified conceptions of victimization. Acknowledging collective and individual survival, healing, struggle, and rebellion, allows for a prospective conception of disability and power in which damaged bodies and minds are reclaimed, narrated, honored in the context of survival, and allied with, rather than discarded.

VI. FROM THEORY TO LEGAL AND SOCIAL PRAXIS

In the previous section, I reviewed a preliminary argument for an integrated and intersectional approach to Critical Race/Disability scholarship. This Part entails two intellectual tasks: a) to brainstorm some preliminary prospective applications in advocacy and practice, by way of illustration,

¹³⁹. PAUL LONGMORE, *THE NEW DISABILITY HISTORY: AMERICAN PERSPECTIVES* 33 (2001).

and b) to contrast these imagined applications with (relatively) mainstream, contemporary social movement organizational politics, organized around disability, or race. The latter discussion can also be understood as a more explicit critique focused on expanding particular questions: How does racism shape and limit contemporary disability rights advocacy and discourse? And the corollary; How does ableism, whether internalized or externally imposed, shape and limit advocacy for race-conscious remedies, (substantive) racial equality, and racial justice?

In responding to each of these questions, it is useful to think about contexts where concentrations of people affected by racial disablement and subordination are particularly acute. The U.S. prison industrial complex is a salient example. A substantial academic and popular literature that acknowledges U.S. prisons, jails, and immigration detention facilities as systems organized by and reflecting intense dynamics of racial subordination, both in the massive and disproportionate incarceration of People of Color and in the often-torturous conditions that inmates are subjected to.¹⁴⁰ Though less commonly recognized in popular discourse, the fact that U.S. prisoners are disproportionately people with preexisting disabilities is also well documented.¹⁴¹ A much smaller body

^{140.} For a particularly helpful introduction, see GLOBAL LOCKDOWN: RACE, GENDER, AND THE PRISON-INDUSTRIAL COMPLEX xii (Julia Sudbury ed., 2005).

^{141.} See, e.g., RONALD H. ADAY, AGING PRISONERS: CRISIS IN AMERICAN CORRECTIONS 88, 101 (2003). The U.S. Congress actually explicitly recognized this phenomenon relative to mental disabilities in the preamble to the Prison Rape Elimination Act. See Prison Rape Elimination Act of 2003,

of literature, partly advanced by disability community activists,¹⁴² explicitly confronts the fact that U.S. prisons create new/emergent disabilities at virtually epidemic rates.¹⁴³ Literature on prisoner health issues, though not always explicitly framing disability as such, also certainly establish the link between prison conditions and medical damage.¹⁴⁴ Taking these points collectively, it is possible to understand incarceration as an experience to which people are vulnerable, particularly at the intersection of race and disability (coupled with class and citizenship status, and at times, gender and sexuality). Further, prison systems can be understood as spaces which, given any substantial time, will almost inevitably break down even those bodies and psyches which are comparatively intact on entry. In other words, U.S. prison systems represent a population primarily composed of People of Color with disabilities that is likely to become increasingly disabled as incarceration progresses.

It is striking that disability rights movements, prisoners' rights movements, and antiracist movements focused on the prison industrial complex virtually never frame or acknowledge the intersectional dynamic

42 U.S.C. §§ 15601–09 (2009).

^{142.} See Stewart, *supra* note 72, at 2.

^{143.} See TERRY KUPERS, PRISON MADNESS: THE MENTAL HEALTH CRISIS BEHIND BARS AND WHAT WE MUST DO ABOUT IT (1999). See, e.g., Disability Rights Washington, 2010 Agenda, available at <http://www.disabilityrightswa.org/public-policy/agenda> (last visited Oct. 27, 2010).

^{144.} See PUBLIC HEALTH BEHIND BARS: FROM PRISONS TO COMMUNITIES 74 (Robert B. Greifinger ed., 2007).

of race and disability in prisons this explicitly.¹⁴⁵ While disability rights movements advocate for the application of disability civil rights laws and for the diligent use of “protection and advocacy” systems in U.S. prisons,¹⁴⁶ the notion that these laws and systems could ideally be deployed as part of a conscious antiracist agenda is seldom present. In turn, while race-conscious critiques of the prison industrial complex acknowledge incarceration as devastating and damaging, the idea of utilizing disability-rights based strategies in advocacy for Prisoners of Color is nearly unheard of.¹⁴⁷

An intersectional analysis yields prospects for advocacy that are potentially useful and certainly underexplored. For instance, prisoner rights litigation has been deeply curtailed in recent years due to the Prison Litigation Reform Act (PLRA), which drastically reduces prisoners’ access to the courts.¹⁴⁸ The effect of the “exhaustion requirement” of the PLRA is particularly chilling, in that it results in the dismissal of

^{145.} An exception is the Learning Rights Law Center, which focuses on the disproportionate incarceration of Youth of Color with disabilities, primarily due to public educational disparities encompassing both race & disability subordination. See generally Learning Rights Law Center, <http://www.learningrights.org> [hereinafter Learning].

^{146.} See, e.g., Disability Rights Washington, <http://www.disabilityrightswa.org> [labout/mission-vision](#) (last visited Oct. 27, 2010).

^{147.} For an exception, see Learning, supra note 145.

^{148.} See generally Prison Litigation Reform Act of 1995, 18 U.S.C. § 3626 (2006).

prisoner claims wherever prison administrative procedures have not been thoroughly exhausted first, regardless of their accessibility, relevance, or effectiveness.¹⁴⁹ However, this and several other prohibitive requirements of the PLRA do not apply to a claim that is filed by a non-prisoner who has legal standing to advocate for a prisoner—an instance almost exclusively applicable to claims filed through state protection and advocacy offices responsible for representing the rights of disabled prisoners.¹⁵⁰ If disability rights prisoner advocacy were first to recognize that most prisoners are disabled or subject to disablement, and then to organize class-based litigation based on this premise, it would open up prospects for litigation-based advocacy that are otherwise out of reach. The lack of recognition that disability laws can apply to most prisoners likely explains, at least in part, why mechanisms like these are so underutilized by prisoner rights advocates struggling for a means to combat the racial dynamics of the prison industrial complex.

It is also striking—and not really surprising—that the Americans with Disabilities Act explicitly delineates the prospects for defining drug addiction as a disability for the purposes of deploying disability civil rights. The medically contradictory definition of addiction as a legal disability codified in the ADA essentially states that (legal) disability begins at the moment when actual substance use ends (and the person presumably enters

¹⁴⁹. Id.

¹⁵⁰. I am particularly indebted to disability prisoner rights advocate and mental disability law scholar Deborah Dorfman for this insight.

recovery).¹⁵¹ To scholars and advocates familiar with the racial politics of the “war on drugs,” the intent and consequence are both evident. That is, the U.S. Congress was very likely trying to ensure that implementing an essentially medical model conception of disability (which would certainly acknowledge addiction as disease) would not open up the possibility that criminalization of drug use (primarily among Communities of Color) would come into conflict with disability civil rights frameworks.

Nevertheless, aside from the troubling issue that disability civil rights are constructed in terms that explicitly legitimate the criminalization of addiction (with racially disparate consequences), there remains a prospective advocacy opportunity. The ADA has at least established a condition in which addiction is actually a basis for the deployment of rights—when the addiction is present, but ongoing substance use has ceased. Although both prescription drugs and criminalized drugs may be present in prisons and jails,¹⁵² the facilities are often presumed to be drug-free, and many of them provide means to demonstrate participation in twelve-step or other recovery activities. In other words, it is at least

^{151.} See Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12111–213 (2000).

^{152.} It is important to acknowledge that prescription medications may sometimes be coercively or forcibly administered. Regardless, prisons, jails, and detention facilities are not only not necessarily “drug-free” environments, but drugs can be used as a form of pacification or social control, with the potential of both traumatic and medically or physiologically damaging consequences.

hypothetically possible that people in recovery from substance use could access disability civil rights to argue that an addiction history should not be read punitively, for instance, in parole hearings about other crimes, and in order to at least attempt to assert that access to better recovery resources are a form of disability right. Although I do not want to be overly optimistic about the prospect of successfully advancing civil rights claims which frame “addicts” as a protected group, it is certainly worth careful exploration, because the ADA has opened up a prospect that does not exist under any other area of federal law.

More generally, disability rights and disability-based needs are critical in planning and implementing prisoner reentry initiatives, yet remain a neglected area of consciousness and policy. The lack of accessible and adequate resources for recovering inmates plays a fundamental role in facilitating reincarceration and premature ex-prisoner mortality. Furthermore, highlighting prison disablement strengthens the prospects for confronting prison conditions as violations of international human rights covenants,¹⁵³ and as violations of domestic constitutional rights.¹⁵⁴

Although contexts where racial dynamics of disablement are obviously epidemic constitute a critical axis for intervention, the relationship between disability and racial civil rights laws is also severely

^{153.} See generally The United Nations Convention Against Torture, opened for signature Feb. 4, 1985, 1465 U.N.T.S. 85.

^{154.} This prospect is primarily applicable to Eighth Amendment claims, but Fourteenth Amendment claims can also be strengthened through the use of disablement as evidence of the severity of disparate treatment.

underexplored. Where there is some comparative discussion, it focuses on comparing the “different” dynamics and needs of communities, rather than considering how the laws might strengthen one another, or how the laws can be used synchronously in the interests of People of Color with disabilities.¹⁵⁵ This limited framing is particularly apparent in the context of affirmative action. Critical Race Theorists have meticulously and thoughtfully challenged and analyzed assaults on affirmative action, whether at the level of specific institutions, common law,¹⁵⁶ or regressive state initiatives.¹⁵⁷ However, whether in Critical Race Studies or in Disability Studies, scholars have not acknowledged or questioned whether disability affirmative action laws or policies could be usefully deployed in combating or at least mitigating racial affirmative action rollbacks. This is an easy omission in some respects; state initiatives target race and gender, and do not acknowledge disability.¹⁵⁸ However, a race-conscious

^{155.} See, e.g., Colker, supra note 113 at 835–36. Colker’s analysis is a helpful critique of the equal treatment of disability and racial civil rights models as equivalent.

^{156.} See, e.g., Otoniel Jimenez Morfin et al., Hiding the Politically Obvious: a Critical Race Theory Preview of Diversity as Race Neutrality in Higher Education, 20 ED. POL’Y 249, 249 (2006); Victor C. Romero, Critical Race Theory in Three Acts: Racial Profiling, Affirmative Action, and the Diversity Visa Lottery, 66 ALB. L. REV. 385, 385 (2002).

^{157.} See Crenshaw 2, supra note 115 at 123.

^{158.} See, e.g., Cal. Prop. 209 (Nov. 5, 1996), available at <http://vote96.ss.ca.gov/Vote96/html/BP/209text.htm> (last visited Oct. 3, 2010).

conception of disabilities, particularly emergent disabilities, could lend itself to the recognition that many People of Color have a substantial and disproportionate need for and right to disability affirmative action. Disability affirmative action should not be used as a simplistic racial proxy,¹⁵⁹ and to the extent that it becomes an effective partial remedy, it would also, without doubt, occasion backlash.¹⁶⁰ Nevertheless, it is striking that the prospects for using disability affirmative action in the service of People of Color dislocated through affirmative action rollbacks is entirely untested, and heretofore not even suggested, even in areas of obvious overlap, such as standardized testing. In that context, disability affirmative action can be used to mitigate the consideration of test scores that reflect inaccessible structures and practices (and which, not coincidentally, also disadvantage certain racial groups).¹⁶¹

Although the constitution of social justice movements is a much larger conversation, in responding to questions of how ableism and racism shape social justice advocacy, it is important to emphasize both

^{159.} Though disability has not generally been used in this way, attempts to substitute class for race in formulations of affirmative action have been critiqued as inadequate. See EDUCATION AND SOCIOLOGY 40 (David L. Levinson et al. eds., 2002).

^{160.} Pokempner & Roberts anticipate this dynamic relative to the substitution of disability welfare for diminishing poverty welfare systems. See Poverty, supra note 7.

^{161.} See PETER SACKS, STANDARDIZED MINDS: THE HIGH PRICE OF AMERICA'S TESTING CULTURE AND WHAT WE CAN DO TO CHANGE IT 2 (2001).

missed opportunities, and to acknowledge the exclusion of People of Color with disabilities from full and central leadership, participation, and agenda construction. The racially specific dynamics of ableism and silencing contribute to a “face” of disability rights that is disproportionately White, and to disability rights movement agendas that as noted, are skewed toward the imperatives shared by comparatively more privileged community members. This critique is not new, particularly in the sense that the racist and racial dynamics of queer, labor, environmental, and feminist social movements are often documented in critical and race-conscious literatures,¹⁶² and play out in somewhat comparable terms around disability rights movements (although the particular politics of this dynamic vis a vis emergent disability requires more critical inquiry). In turn, disability and ableism, and particularly the interaction between ableism and internalized racism, can serve to closet or socially discredit People of Color with disabilities within Communities of Color, resulting in the sacrifice of a (race-conscious) conception of disability rights from recognized antiracist and race-conscious advocacy and discourse.

^{162.} See, e.g., NANCIE CARAWAY, *SEGREGATED SISTERHOOD: RACISM IN THE POLITICS OF AMERICAN FEMINISM* 3 (1991); ALAN DRAPER, *CONFLICT OF INTERESTS: ORGANIZED LABOR & THE CIVIL RIGHTS MOVEMENT IN THE SOUTH, 1954–1968* 3 (1994); *BLACK QUEER STUDIES: A CRITICAL ANTHOLOGY* (E. Patrick Johnson & Mae G. Henderson eds., 2005); BETSY HARTMANN, *REPRODUCTIVE RIGHTS & WRONGS: THE GLOBAL POLITICS OF POPULATION CONTROL* 312 (1999).

CONCLUSION

If I have done my work in this paper at all successfully, the dynamics of racial disablement and ableist racism should be—very initially—surfacing as systems embedded in a wide range of institutional and social practices. Ableism/racism is interdynamic with class, gender, sexuality, citizenship, and related bases for subordination, and pervades the lives of affected populations. The social and political consequences of recognizing emergent disabilities, disablement, and race deserve more contemplation here. It is not without political and emotional repercussions to confront the fact that family and community members are sick, pained, or dying prematurely in the context of disabling violence. Though the recognition that White supremacy and imperialism are deadly is not remotely new, focusing on disability politicizes impairment, pain, and suffering in a context that makes the psychologically and medically destructive mechanisms of White supremacy ultimately more visible. It also enables the recognition that in various ways, racial narratives and analyses are sometimes already about disability and disablement, but without thorough consideration or claiming of the space of “Disability Studies” or “Disability Theory,”¹⁶³ and certainly without adequate validation by recognized disability scholarship and disability rights movements.

The insight that mainstream disability rights movements and disability studies have a race problem—or more specifically that they have largely reflected and accepted a White—dominated conception of disability should not be entirely shocking, at least to theorists who are already sensitized to racial politics. However, I also suggest that a race-conscious analysis of emergent disability sheds new light on **why** it matters.

Again, whatever disability rights are in U.S. law and policy—to the extent that they are accessible and enforced (which is in itself contested and variable)—they are the rights that people who have been injured, sickened, or impaired by White supremacy—and by intersecting patriarchal and capitalist systems—can conceivably claim. The fact that disability rights, politics and advocacy movements do not adequately embrace the imperatives of populations disabled by violence, racism, and subordination means that to a substantial extent, the survivors of disablement by White supremacy disappear from legal conception and framing. The challenges for Critical Disability/Race Theory therefore involve a deeply critical engagement with law itself, an evolving and complicated engagement with and expansion of the recognized social and legal meanings of intersectionality, and a cautious but diligent reconstruction of the meanings of disability.

