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Journal
Wayne Law Review, 71

Authors
Morgan, Jameila
Caldwell, Kate

Publication Date
2025

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DISCRIT LEGAL STUDIES (DCLS): A METHOD FOR LEGAL ANALYSIS

KATE CALDWELL† & JAMELIA MORGAN††

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† Kate Caldwell, Director of Research and Policy at Northwestern Pritzker School of Law.
†† Jamelia Morgan, Professor of Law, Northwestern Pritzker School of Law, and Faculty Director at the Center for Racial and Disability Justice.

I. INTRODUCTION

Legal analysis has long been dominated by formalist approaches that emphasize objectivity, neutrality, and the consistent application of legal rules. While these principles may seem fair in theory, they often fail to account for the deeply embedded systems of racism and ableism that shape the law's development, interpretation, and enforcement. Traditional legal frameworks tend to overlook how laws have historically marginalized disabled people, particularly those from racialized communities. This oversight has led to the continued exclusion and oppression of these populations under the guise of legal neutrality.

Thirty-five years after the passage of the Americans with Disabilities Act (ADA), disabled people remain an oppressed group in society. Disparate exposure to violence, discrimination, poverty, and premature death characterizes the experience of living with a disability in the United States. Despite the odds, disabled scholars and activists have surfaced criticism to name and critique the conditions that have served to reinforce their oppression. Disability Critical Race Theorists Subini Ancy Annamma, David Connor, and Beth Ferri argue that "all dis/ability categories, whether physical, cognitive, or sensory, are also subjective," which suggests that "societal interpretations of and responses to specific differences from the normed body are what signify a dis/ability."[1] Similarly, as critical disability studies scholar Nirmala Erevelles explains, disability is "a socially constructed category that derives meaning and social (in)significance from the historical, cultural, political, and economic structures that frame social life."[2] Recognizing the socially constructed nature of disability invites deeper engagement with law's constitutive role in assigning meaning to bodily variation and the law's role in constructing certain meanings as "other." Disability Justice activists have identified the structural dimensions of ableism in order to identify principles that can

1. *See* Subini A Annamma et al., *Dis/ability Critical Race Studies (DisCrit): Theorizing at the Intersections of Race and Dis/ability*, 16 RACE ETHNICITY & EDUC. 2–3 (2013); *see also* Bradley A. Areheart, *When Disability Isn't "Just Right": The Entrenchment of the Medical Model of Disability and the Goldilocks Dilemma*, 83 IND. L.J. 181, 188–89 (2008) ("One upshot of the social model is that the experience of disability is not inherent or inevitable given a particular medical condition; rather, it depends upon the particular social context in which one lives and functions.") (footnotes omitted).

2. Nirmala Erevelles, *Crippin' Jim Crow: Disability, Dis-Location, and the School-to-Prison Pipeline*, *in* DISABILITY INCARCERATED: IMPRISONMENT AND DISABILITY IN THE UNITED STATES AND CANADA 81, 85 (Liat Ben-Moshe et al. eds, 2014).

guide collective action and solidarity.[3] These scholars and activists have identified law as one site for critique of disability-based oppression. Their efforts should be recognized and incorporated into legal critique and legal analysis.

This Article bridges theory and practice to develop an analytical framework for incorporating DisCrit and Disability Justice into American legal analysis. It aims to identify a method for adapting and applying core tenets of DisCrit and core principles of Disability Justice to address concrete legal issues or legal problems by questioning: What are the ways that we can recognize DisCrit or Disability Justice in legal analysis? How do the insights of DisCrit and Disability Justice inform the framing of legal issues, or inform the analysis of legal problems? To develop a coherent framework for American law, we develop a new theoretical and analytical concept—Disability Critical Legal Studies (DCLS)—that incorporates the central components of DisCrit and Disability Justice in order to develop a comprehensive framework for thinking critically about disability in American law.

II. EMERGENCE AND EVOLUTION OF DISABILITY LEGAL STUDIES

A. Emergence of Disability Legal Studies

Over the past several decades, we have seen a progression from disability law to disability rights law to Disability Legal Studies (DLS). In its narrowest form, disability law focuses on individual compliance and accommodation and adopts a medical model of disability, a deficiency model that sees disability as an individual problem.[4] A more expansive conception of disability rights law, however, focuses on civil rights and transformative societal change. It views disability as a civil rights issue and aligns disability rights with other civil rights movements (e.g., race, gender, LGBT+ movements). Rights-based models of disability, such the minority-group model, inform disability rights law.[5] Yet, even under the rights model, the goal should be not simply accommodating systemic

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3. *10 Principles of Disability Justice*, SINS INVALID (Sept. 17, 2015), https://static1.squarespace.com/static/5bed3674f8370ad8c02efd9a/t/606e264c8c838d062a7b0fbb/1617831500521/10+PRINCIPLES+OF+DISABILITY+JUSTICE+-+Plain+Text.pdf [https://perma.cc/2PL6-V6MZ].

4. Jamelia N. Morgan, *Policing Under Disability Law*, 73 STAN. L. REV. 1405–10 (2021).

5. Harlan Hahn, *The Political Implications of Disability Definitions and Data*, 4 J. DISABILITY POL'Y STUD., 41, 41–52 (1993); MARTA RUSSELL, CAPITALISM AND DISABILITY: SELECTED WRITINGS BY MARTA RUSSELL (Keith Rosenthal, ed., Haymarket Books 2019).

inequities reactively in order to address discrimination, but rather challenging systemic and structural barriers that perpetuate the exclusion and oppression of disabled peoples while working towards empowerment, autonomy, and full participation in society. DLS began as an effort to integrate Disability Studies and Critical Legal Studies (CLS) with the goal of interrogating the ways in which law socially constructs, defines, and regulates disability. In doing so, DLS engages with interdisciplinary frameworks to challenge the normative assumptions and structures embedded in law and society.

While the shift from a narrow conception of disability law to a more expansive disability rights law reflects a move from compliance-based frameworks to a broader civil rights perspective, the evolution to DLS further deepens the conversation by critically examining how law itself produces and maintains systems of power and inequality, including ableism.

The maturation of any discipline often leads to the call for the application of critical theory in that field. We can see this in the advancement of sociolegal theory towards Critical Legal Studies (CLS), which came about as a response to the "insiders" view of the law. Herein the application of critical theory involves a critique of the foundations of conventional knowledge as well as a critique of power's social effects. CLS also demands a commitment to social justice. A similar trend appears in the advancement of Disability Studies (DS) towards Critical Disability Theory (CDT).[6] Herein the application of critical theory requires four principles: (1) the irreducibility of social life to objective facts; (2) the necessity of linking theory with praxis in the struggle for an autonomous and participatory society; (3) awareness of critical theory's own historicity and critical reflection on its conceptual framework; and (4) the need to engage in a dialogue with other cultures on the issues and concepts of current significance.[7]

Similarly, scholars have long critiqued the field of Disability Studies for its lack of substantive engagement with race and interacting systems

6. CDT is sometimes referred to as Critical Disability Studies (CDS). While the two are often used interchangeably, technically CDT is part of CDS overall. For the purposes of this article, we focus on CDT as a central component of CDS overall.

7. Helen Meekosha & Russell Shuttleworth, *What's So 'Critical' About Critical Disability Studies?*, 15 AUSTRALIAN J. HUM. RTS. 47 (2009). Interestingly, Critical Race Theory (CRT) emerged in response to the critique that CLS was not adequately addressing issues of race, particularly the ways in which the law maintains racial inequality and reinforces white supremacy.

of oppression.[8] In response, Disability Critical Race Theory (DisCrit) emerged to bring together CDT with Critical Race Theory (CRT), informed by Disability Justice principles (see Figure 1).[9]

Recent work from legal scholars calls for a "race intervention" in DLS, similar to how CRT created a race intervention in CLS. Payne-Tsoupros[10] argues there is a need for a Disability Justice lens in legal education curricula and training, one that incorporates DisCrit and challenges the framing of disability. Morgan argues for a DisCrit approach to American law to interrogate how laws not only function to co-construct race and disability, but also how they have contributed to ongoing subordination of disabled Black, Indigenous, and People of Color (BIPOC).[11] The scholars who originally created DisCrit did so within the context of disability education, and acknowledged that work still needs to be done to apply DisCrit to other disciplines and contexts. As such, Morgan addresses each of the seven tenets of DisCrit and how they apply to the law. Pérez draws upon this work to pull out four central tenets to what she terms *DisCrit Legal Analysis*: the law (1) simultaneously constructs disability and race; (2) does not act with race and disability neutrality; (3) apportions privileges and rights based on disability and race in a way that devalues BIPOC disabled bodyminds; and (4) interest convergence.[12] While these scholars do a good job of establishing essential critiques of the status quo of legal analysis, there is still the need for a framework and structure to guide legal analysis as well as a way to assess the quality of analyses.

It is in this context that Morgan raises the questions, "What can law do to protect multiply marginalized disabled people of color? Are there existing methodologies within legal scholarship that can more adequately protect those situated at the intersection of multiple axes of oppression?" The work presented here provides one such method alongside the theoretical and conceptual frameworks that justify it.

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8. Angel L. Miles et al., *An Open Letter to White Disability Studies and Ableist Institutions of Higher Education*, DISABILITY STUD. Q. (2017), https://dsq-sds.org/index.php/dsq/article/view/5997/4686 [https://perma.cc/W6LJ-LLDB]; Christopher Bell, *Is Disability Studies Actually White Disability Studies?*, *in* THE DISABILITY STUDIES READER 37482 (Lennard J. Davis ed., 2010).

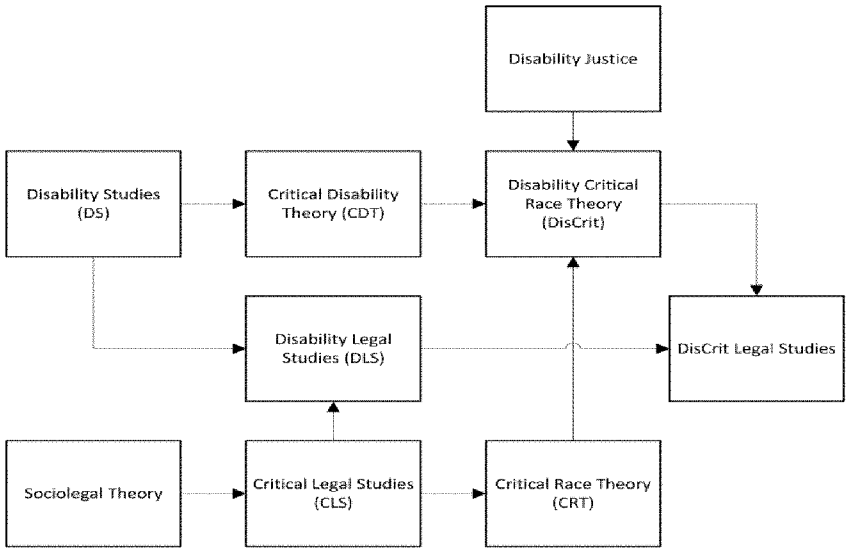
9. DAVID J. CONNOR, DISCRIT: DISABILITY STUDIES AND CRITICAL RACE THEORY IN EDUCATION (Subhini A. Annamma et al. eds., 2016).

10. Christina Payne-Tsoupros, *A Starting Point for Disability Justice in Legal Education*, 6 J. CMT. SOC. CHANGE ON RACE & ETHNICITY 165 (2020).

11. Jamelia Morgan, *Toward a DisCrit Approach to American Law*, *in* DISCRIT EXPANDED: REVERBERATIONS, RUPTURES, AND INQUIRIES 13, 30 (Subini A. Annamma et al. eds., 2020).

12. Katherine Perez, Disability Law Stories: A Disability Studies and Critical Race (Dis/Crit) Legal Analysis (2004) (Ph.D. dissertation, University of Illinois at Chicago) (on file with author).

Figure 1: Theoretical Framework of DCLS



B. Evolution of DLS

In 2006, Sagit Mor first used the term "Disability Legal Studies," bringing together CLS and DS to emphasize the constitutive role of law in producing disability.[13] She analyzed how welfare laws and policies, while providing relief, also reinforce power hierarchies that marginalize disabled individuals. According to Mor, DLS necessitates thick sociolegal analysis, both contextual and relational, and expresses "a deep commitment to social change."[14] Five elements to conducting thick DLS analysis include scrutinizing stigma, access, social services, distribution, and the embodied experience.[15] Further, Mor distinguishes between disability as a discrete versus general category of analysis. As a *discrete analytical category*, DLS focuses on how the law affects disabled people and how disabled

13. Sagit Mor, *Between Charity, Welfare, and Warfare: A Disability Legal Studies Analysis of Privilege and Neglect in Israeli Disability Policy*, 18 YALE J.L. & HUMAN. 63 (2006).

14. *Id.*

15. Syracuse University College of Law, *Sagit Mor: Disability Law and Policy Program Lecture Series*, YOUTUBE (Apr. 28, 2016), https://youtu.be/M91YZsA3SJI?si=wUGeB-J7v3TfWew1 [https://perma.cc/MSU2-CGQA].

people interact with the law. As a *general analytical category*, DLS focuses on how disability serves as an organizing principle of a particular legal doctrine, field, or institution.

Arlene Kanter built upon this foundation by arguing for the need to teach law from a DLS perspective, incorporating DS into legal scholarship. As an academic field, DLS should analyze both disability and normalcy in law and society, emphasizing that disability is "us," disability is inclusive, and disability informs us about the legal system. She examined the intersection of disability and law, focusing on international human rights and comparative disability law. Moreover, Kanter established three core principles for DLS: (1) recognizing disability as a social construct; (2) bridging civil and human rights; and (3) bridging formal and substantive equality.[16]

Rabia Belt and Doron Dorfman further add to the development of these DLS core principles by bringing Mor and Kanter's work into dialogue with contemporary DS scholars that take a more humanities-focused, intersectional approach.[17] They analyzed how disability intersects with other identity axes like race, class, and gender, and critiqued societal norms that marginalize disabled individuals. Their work examines the historical treatment of disabled Americans, influenced by eugenic notions, and the evolution of disability as a category of analysis alongside other social identities. Subsequently, they posit four core principles to the DLS framework: (1) disability directly or indirectly affects, or will affect, every single person; (2) disability is an "inclusive category," one that intersects with race, gender, sexual orientation, immigration status, and religion; (3) disability teaches us about our legal system by shedding light on the values, histories, and intentions behind rules and court decisions; and (4) Disability Studies gives us tools to imagine a better future.

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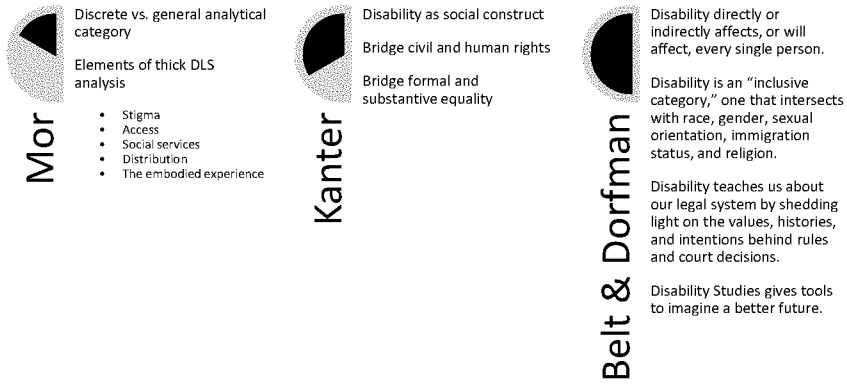
16. Arlene Kanter, *The Law: What's Disability Studies Got to Do with It or An Introduction to Disability Legal Studies*, 42 COLUM. HUM. RTS. L. REV. 403 (2011).

17. Rabia Belt & Doron Dorfman, *Disability, Law, and the Humanities: The Rise of Disability Legal Studies*, *in* THE OXFORD HANDBOOK OF LAW AND HUMANITIES 19, 145 (Simon Stern et al. eds., 2019).

Figure 2: Evolution of DLS



The evolution of Disability Legal Studies is to incorporate DisCrit, reflecting current changes in the field of DS, in the law, and in our society. These changes emphasize the need to critically examine the intersection of race and disability within a justice framework.

C. Bridging Theory

DLS established core frameworks for understanding the relationship between the category of disability and law, the nature of disability discrimination and subordination, and potential pathways to legal reform. DisCrit and Disability Justice analysis build on some of DLS's core insights but bring in a more critical and more radical approach to understanding disability alongside and within legal regimes. For instance, while DLS has made fundamental contributions, as a method it warrants critique for its limited engagement with intersectionality, anti-capitalist analysis, and transformative approaches to social change outside the legal system. Of course, these are not the ambitions DLS set for itself, and to the extent there are current efforts within legal scholarship to fill in the gaps that DLS left behind, these efforts reflect a need to add to the analytical frameworks available to scholars of disability within law.

Table 1: Comparing Approaches to Disability in the Law

	Disability Law	**Disability Rights Law**	**Disability Legal Studies**	**DisCrit Legal Studies**
Focus	Accommodation	Equality and Inclusion	Critical Analysis of how the law constructs, defines, and regulates disability	Power
Model of Disability	Medical Model	Rights-Based Models (e.g. minority-group model)	Social Model	Deploys models to analyze legal issues that reflect deeper social problems
Goal	Compliance	Rights Enforcement	Critique of Ableist Legal Systems	Abolition of ableist systems, policies, and practices

DisCrit Legal Studies goes beyond the foci of disability law, disability rights law, and DLS to focus on power, deploying models of disability to analyze legal issues that reflect deeper social problems with the goal of abolishing ableist systems, policies, and practices.

While beyond the scope of the immediate discussion, and as will be addressed in a future article, it bears mentioning that DLS appears overly focused on social constructionism and the social model of disability as a representation of DS. Models of disability are a tool for understanding and addressing disability. There are many models of disability, and they are not mutually exclusive. Even the medical and social models of disability, which are positioned as antithetical to each other, often coexist in reality. Disabled people and scholars rely upon these analytical tools to help them navigate the complexities of the world in which we live and its competing priorities. Critical Disability Theory requires challenging the assumptions of DS. One such assumption that we argue DisCrit needs to challenge is the very core principles of DS itself: that DS must be participatory, emancipatory, and benefit the disability community.[18] However, the DS scholars who established these principles are primarily white men coming from the Global North. It is the emancipatory element, in particular, that calls for critique from a DisCrit and Disability Justice perspective.

18. Emma Stone & Mark Priestley, *Parasites, Pawns and Partners: Disability Research and the Role of Non-Disabled Researchers*, 47 BRIT. J. SOCIO. 699 (1996); DAN GOODLEY, DISABILITY STUDIES: AN INTERDISCIPLINARY INTRODUCTION (2d ed. 2016); LEN BARTON, OVERCOMING DISABLING BARRIERS: 18 YEARS OF DISABILITY AND SOCIETY (2006).

DS scholars have long challenged the notion that outsiders can simply "empower" a community—a perspective that inherently carries a paternalistic undertone. True empowerment, they argue, comes when disempowered communities gain access to the information and resources necessary to uplift themselves. Only then is genuine emancipation possible.[19] That said, this discourse has largely unfolded outside the specific context of the United States, particularly regarding race and the deeply complex history of "emancipation." CRT has long critiqued this very issue, raising essential questions about how liberation is framed and understood. In this vein, we argue that a DisCrit approach should elicit a shift from the language of emancipation to that of liberation. It also begs us to question whether and to what extent the "participatory" element of DS has included people of color, LGBT+ communities, and low-income communities, and whether the objective of "benefitting the disability community" is reaching these communities. On at least one dimension, the critique of disability rights and DS as "too white"[20] indicates the answer is no, it does not.

III. RACING DISABILITY LAW, ENABLING CRITICAL RACE THEORY

A. DisCrit

Disability Critical Race Theory is a theoretical framework that incorporates an analysis of both race and disability. Scholars Subini Annamma, David Connor, and Beth Ferri "combine aspects of Critical Race Theory and Disability Studies" in order to permit this analysis. As scholars positioned within Schools of Education, Annamma, Connor, and Ferri ground their framework in a discussion of the "interdependent constructions of race and dis/ability in education and society in the United States[.]"[21] They then go on to identify seven tenets of DisCrit to guide the analysis: (1) DisCrit recognizes racism and ableism shape notions of normalcy; (2) DisCrit acknowledges multidimensional identities; (3) DisCrit rejects biological notions of race and disability and recognizes both as social constructions and responses to differences from the norm; (4) DisCrit disrupts "the tradition of ignoring the voices of traditionally marginalized groups"; (5) DisCrit "[c]onsiders legal, ideological, and

19. Kate Caldwell, *Dyadic Interviewing: A Technique Valuing Interdependence in Interviews with Individuals with Intellectual Disabilities*, 14 QUALITATIVE RSCH. 488, 507 (2014).

20. Carrie E. Mulderink, *The Emergence, Importance of #DisabilityTooWhite Hashtag*, DISABILITY STUD. Q., https://dsq-sds.org/index.php/dsq/article/view/6484/5565 [https://perma.cc/HJD8-P2VA].

21. *See* Annamma et al., *supra* note 1, at 1.

historical aspects of dis/ability and race and how both have been used separately and together to deny the rights of certain citizens"; (6) DisCrit "[r]ecognizes how whiteness and Ability" function as "property, conferring economic benefits to those who can claim whiteness and/or normalcy and disadvantages for those who cannot lay claim to these identity statuses"; and (7) DisCrit calls for "activism and . . . diverse forms of resistance."[22]

In a previous book, Morgan applied these tenets to American law. A brief description of that earlier analysis is warranted. In *Toward a DisCrit Approach to American Law*, Morgan argued that a "DisCrit approach" to American law provides a useful "theoretical framework for understanding how laws function to construct not just racial categories, but also construct the definition and boundaries of disability."[23] Applying the tenets of DisCrit, Morgan illustrates how a critique of American law might be developed within legal analysis in areas as diverse as immigration law, property law, criminal law, and procedure, among other areas. Central to the DisCrit approach, as Morgan recognizes, is a focus on structural accounts of disability-based oppression and discrimination.

In recognizing structural features of disability-based oppression and discrimination, DisCrit stands within a long history. Structural accounts of disability discrimination feature in the foundational texts of disability law as a discipline in the United States. Early engagement with disability law emphasized anti-subordination as an animating purpose behind the ADA.[24] In earlier work, Ruth Colker urged courts to adopt an anti-subordination perspective under the Equal Protection Clause.[25] Under the anti-subordination perspective, Colker writes, "it is inappropriate for certain groups in society to have subordinated status because of their lack of power in society as a whole."[26] Similarly, Sam Bagenstos argued the ADA's protections covered not just antidiscrimination norms but the ongoing removal of obstacles that bar participation in a "range of activities in public and private life." In his article, Bagenstos argued that the definition of disability under the ADA should be interpreted consistently with the view that disabled people are a subordinated group in society:

> Through prejudice, stereotypes, and widespread neglect, society's attitudes and practices attach systematic disadvantage to particular

22. *See id.* at 13–17.

23. Morgan, *supra* note 11.

24. Jasmine E. Harris, *Reckoning with Race and Disability*, 130 YALE L.J.F. 916 (2021).

25. Ruth Colker, *Anti-Subordination Above All: Sex, Race, and Equal Protection*, 61 N.Y.U. L. REV. 1003, 1007 (1986).

26. *Id.*

> impairments . . . . Disability rights law can therefore be seen as providing members of that subordinated class with the means (anti-discrimination and reasonable-accommodation requirements) to challenge the practices that enact and enforce their subordinated status.[27]

Beyond addressing how this account can assist courts in identifying the appropriate interpretations of disability under the ADA, Bagenstos's account of group-based subordination, as well as stigma, accurately frames the nature and scope of disability-based marginalization, discrimination, and oppression today.

For its part, early works of CRT scholarship did not substantially engage with structural analyses of disability. In the foundational texts, there is limited engagement with ableism, disability theory, and the role of law in producing disability-based subordination in Critical Race scholarship. In race law and Critical Race scholarship, discussions on disability tend to frame disability as a metaphor for racial discrimination or oppression.[28] Robust and critical engagement with disability is relatively limited, if acknowledged at all, a point Beth Ribet made in her groundbreaking law review article on the topic.[29]

An intersectional approach is still needed as DisCrit and Disability Justice advocates have recognized. Identifying the relationship between race and disability and surfacing what methods of analysis allow for a deeper understanding of this relationship is essential to explaining the mutually constitutive relationship between racism and ableism.[30] In this way, an intersectional approach to race and disability categories (specifically, but not exclusively) provides a tool for diagnosing a fuller

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27. Samuel R. Bagenstos, *Subordination, Stigma, and "Disability,"* 86 VA. L. REV. 397, 418 (2000).

28. *See* Jamelia Morgan, *On the Relationship Between Race and Disability*, 58 HARV. C.R.-C.L.L. REV. 663 (2023).

29. Beth Ribet, *Surfacing Disability Through a Critical Race Theoretical Paradigm*, GEO. J. L. & MOD. CRITICAL RACE PERSP. 209 (2010). Christopher Bell made a similar claim with respect to African American Studies. *See* Christopher M. Bell, *Introduction: Doing Representational Detective Work*, *in* BLACKNESS AND DISABILITY: CRITICAL EXAMINATIONS AND CULTURAL INTERVENTIONS 3 (Christopher M. Bell ed., 2011) ("Too much critical work in African American Studies posits the African American body politic in ableist (read non-disabled) fashion."). This does not mean that experiences and accounts of disability are not present in Critical Race scholarship, as indeed they are. Disability is included as an axis of subordination in well-known scholarship in the field of Critical Race Theory. *See, e.g.*, Sumi K. Cho, *Converging Stereotypes in Racialized Sexual Harassment: Where the Model Minority Meets Suzie Wong*, 1 J. GENDER, RACE, & JUST. 177, 182 n.19 (1997).

30. Morgan, *supra* note 28, at 681.

account of the nature and scope of racism and ableism both historically and today.[31] The disability experience is not monolithic. Even individuals with the same disability may experience disability differently day-to-day. Beyond that, how disability intersects with other marginalized identities—race, gender, sexuality, class—suggests that a purely anti-subordination approach may not adequately protect disabled persons who are multiply marginalized. Prof. Kim Crenshaw's "basement hatch" metaphor provides a way to illustrate the point:

> Imagine a basement which contains all people who are disadvantaged on the basis of race, sex, class, sexual preference, age and/or physical ability. These people are stacked—feet standing on shoulders—with those on the bottom being disadvantaged by the full array of factors, up to the very top, where the heads of all those disadvantaged by a singular factor brush up against the ceiling. Their ceiling is actually the floor above which only those who are not disadvantaged in any way reside. In efforts to correct some aspects of domination, those above the ceiling admit from the basement only those who can say that "but for" the ceiling, they too would be in the upper room. A hatch is developed through which those placed immediately below can crawl. Yet this hatch is generally available only to those who—due to the singularity of their burden and their otherwise privileged position relative to those below—are in the position to crawl through. Those who are multiply burdened are generally left below unless they can somehow pull themselves into the groups that are permitted to squeeze through the hatch.[32]

Crenshaw's point here is that individuals from groups that do not reflect the dominant norm will not be able to benefit from the protections of antidiscrimination law unless and until "their experiences are recognizably similar to those whose experiences tend to be reflected in antidiscrimination doctrine."[33] This served to limit legal interventions based on antidiscrimination law and the norms of analysis. In response to this limitation, Critical Race Theorists developed new approaches to, and analysis of antidiscrimination law, which could be used to permit recognition of legal injuries for multiply marginalized groups.[34] Critical

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31. *Id.* at 682.

32. Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1 U.CHI. L.F. 139, 151–52 (1989).

33. *Id.* at 152.

34. *Id.* at 151–52.

Race Theorists deployed counternarratives and what Mari Matsuda referred to as "outsider jurisprudence" to challenge the status quo and disrupt legal liberal norms regarding the nature of legal injuries and the rules that governed the recognition of those injuries.[35]

As Critical Race Theorists have long argued, there are clear limits to formal equality. A CRT intervention into disability law can explain why thirty-five years after the passage of the ADA, with clear exceptions for those with privilege, disabled people remain a subordinated group within society. It is no surprise that legal protections against and remedies will fail to achieve substantive equality for historically subordinated groups. As Dean Spade and Morgan Bacchisis explain, "[c]ritical race theorists have helped identify the inadequacy of the discrimination principle that is central to the failing of 'formal legal equality' to deliver material relief from racism."[36] Further, they explain that "when racist harm is framed as a problem of aberrant individuals who discrimination and when intention must be proved to find a violation of the law, the background conditions of white supremacy are implicitly declared neutral."[37]

Other key concepts in CRT can explain the limits of the ADA, particularly for multiply marginalized groups. The ADA confers an affirmative duty on employers, public entities, and places of public accommodations to accommodate qualified individuals with disabilities. At the same time, even with that acknowledgement, the ADA still conditions relief on qualification and limits relief available where, for example, such accommodation poses an undue hardship for employers, or fundamentally alters a program, service, or activity with public entities.

Incorporating CRT analysis into disability law—i.e., adopting a DisCrit approach—offers an intersectional analytic that can be applied within American law. DisCrit offers a lens through which to both identify potential limits of legal remedies and to develop more robust arguments in support of broader coverage, increased remedies, etc. In prior work, Morgan outlines a provisional proposal describing a DisCrit approach to American law. The current work provides a more in-depth illustration of a DisCrit approach to law, informed by core tenets of DisCrit, the genealogies of race and disability discussed in prior work.[38]

DisCrit as applied to American law points to insights that must be emphasized because of their unique importance to law and legal analysis

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35. Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2323–26 (1989).

36. Morgan Bassichis & Dean Spade, *Queer Politics and Anti-Blackness*, *in* QUEER NECROPOLITICS 191, 200 (Jin Haritaworn et al. eds., 2014).

37. *Id.* at 201.

38. Morgan, *supra* note 11, at 13.

and have already been incorporated into existing DLS analysis. First, as Critical Race Theorists have identified, racial progress narratives obscure the more complex dynamics of what Carbado calls the "reform/retrenchment dialectic."[39] Disability Law Scholars have for their part written about the "backlash to the ADA."[40] In a foundational text, *Backlash Against the ADA: Reinterpreting Disability Rights*, editor Linda Hamilton Krieger and several leading scholars within disability rights outlined the nature of backlash against the ADA, its cause, and appropriate responses to it.[41] DisCrit similarly considers how overwhelming victories for disability rights movements, culminating in the passage of the ADA, presages later efforts to scale back disability rights, legal protections, and benefits for people with disabilities. Second, DisCrit pushes beyond legal remedies and interventions. Critical race and disability scholars critique the liberal and hegemonic legal liberal approach to racial injustice and disability injustice: rights as the means for social change and access and inclusion as the end.[42] These scholars have lodged extensive critiques of access and inclusion, acquired primarily through the identification and adjudication of rights.[43]

B. Disability Justice

Within the last decade, discussions of Disability Justice have proliferated in legal scholarship.[44] Advocates of Disability Justice

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39. Devon W. Carbado, *Critical What What?*, 43 CONN. L.R. 1593, 1607–08 (2011).

40. LINDA HAMILTON KRIEGER, BACKLASH AGAINST THE ADA; REINTERPRETING DISABILITY RIGHTS (Linda Hamilton Krieger ed., 2003).

41. *Id.* at 14.

42. *See, e.g.*, Shirley Lin, *Bargaining for Integration*, 96 N.Y.U. L. REV. 1826, 1831–32 (2021) ("Yet disability's frameworks remain vastly undertheorized. Identifying as disabled signifies a social and legal identity that implicitly demands institutional transformation—a potentially broader view of disability than that of a status conferring an individual right to be claimed. It is this tension between systemic change and liberalism's individuated approach to civil rights that disability activists increasingly critique as they conceive of disability justice as robust, with particular attention to co-constructed social identities, including race."). Similar critiques exist within early disability law scholarship. For example, as Mark Weber, a disability law scholar, has pointed out, inclusion applies only for those "able-bodied" enough to access protections *See, e.g.*, Mark C. Weber, *Disability and the Law of Welfare: A Post-Integrationist Examination*, 2000 U. ILL. L. REV. 889, 913 (2000) (discussing post-integration perspective).

43. Robyn M. Powell, *Disability Reproductive Justice*, 170 U. PA. L. REV. 1851, 1883–84 (2022); Natalie M. Chin, *Centering Disability Justice*, 71 SYRACUSE L. REV. 683, 689–91 (2021).

44. *See, e.g.*, Morgan, *supra* note 28, at 666 n.13; Powell, *supra* note 43, at 1889; Sarah H. Lorr, *Unaccommodated: How the ADA Fails Parents*, 110 CALIF. L. REV. 1315, 1340 n.44 (2022); Britney R. Wilson, *Making Me Ill: Environmental Racism and Justice As Disability*, 170 U. PA. L. REV. 1721, 1750 n.194 (2022); Chin, *supra* note 43, at 740.

maintain that it offers an important analytical tool that can (and does) guide ongoing social movements and organizing. The origins of Disability Justice can be traced to a collective of disabled activists "committed to social and economic justice for all people with disabilities" known as Sins Invalid.[45] Legal scholars Natalie Chin, Sarah Lorr, Jamelia Morgan, Robyn Powell, and Britney Wilson, in particular, have relied on Sins Invalid's definition of Disability Justice to inform their work.[46] Patty Berne of Sins Invalid defines Disability Justice as a:

> [F]ramework [that] understands that all bodies are unique and essential, that all bodies have strengths and needs that must be met . . . . We understand that all bodies are caught in these bindings of ability, race, gender, sexuality, class, nation state and imperialism, and that we cannot separate them.[47]

Consistent with this framework, Disability Justice activists and scholars challenge the marginalization of disabled people by contesting stigma and reclaiming stigmatized identities. As Berne puts it, "[a]ll bodies and minds are unique and essential. All bodies are whole. All bodies have strengths and needs that must be met. We are powerful not despite the complexities of our bodies, but because of them. We move together, with nobody left behind. This is Disability Justice."[48] Scholar Gracen Brilmyer emphasizes the importance of cross-disability solidarity and draws from principles articulated in Disability Justice movements. As Birlmyer notes, Disability Justice is committed to breaking down silos that can disrupt cross-disability organizing and solidarity. Disability Justice, according to Birlmyer, is "committed to breaking down ableist / patriarchal / racist / classed isolation between people with physical impairments, people who identify as 'sick or are chronically ill, 'psych' survivors and those who identify as 'crazy,' neurodiverse people, people with cognitive impairments, people who are a sensory minority[.]"[49]

Disability Justice incorporates the following ten principles: [50]

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45. SINS INVALID, https://sinsinvalid.org/ [https://perma.cc/4YJD-AK7T].

46. *See* sources cited *supra* note 44.

47. *Id.*

48. *Id.*

49. Gracen Brilmyer, *Towards Sickness: Developing a Critical Disability Archival Methodology*, 17 J. FEMINIST SCHOLARSHIP 26, 29 (2020).

50. *The 10 Principles of Disability Justice*, ASSOCIATED STUDENTS COMM'N ON DISABILITY EQUITY, https://code.as.ucsb.edu/the-10-principles-of-disability-justice/ [https://perma.cc/44SK-CWDY].

1. INTERSECTIONALITY: "We do not live single issue lives" –Audre Lorde. Ableism, coupled with white supremacy, supported by capitalism, underscored by heteropatriarchy, has rendered the vast majority of the world "invalid."

2. LEADERSHIP OF THOSE MOST IMPACTED: "We are led by those who most know these systems." –Aurora Levins Morales

3. ANTI-CAPITALIST POLITIC: In an economy that sees land and humans as components of profit, we are anti-capitalist by the nature of having non-conforming body/minds.

4. COMMITMENT TO CROSS-MOVEMENT ORGANIZING: Shifting how social justice movements understand disability and contextualize ableism, Disability Justice lends itself to politics of alliance.

5. RECOGNIZING WHOLENESS: People have inherent worth outside of commodity relations and capitalist notions of productivity. Each person is full of history and life experience.

6. SUSTAINABILITY: We pace ourselves, individually and collectively, to be sustained long term. Our embodied experiences guide us toward ongoing justice and liberation.

7. COMMITMENT TO CROSS-DISABILITY SOLIDARITY: We honor the insights and participation of all of our community members, knowing that isolation undermines collective liberation.

8. INTERDEPENDENCE: We meet each others' needs as we build toward liberation, knowing that state solutions inevitably extend into further control over lives.

9. COLLECTIVE ACCESS: As brown, black, and queer-bodied disabled people we bring flexibility and creative nuance that go beyond able-bodied/minded normativity, to be in community with each other.

10. COLLECTIVE LIBERATION: No body or mind can be left behind—only moving together can we accomplish the revolution we require.

Disability Justice provides a critical and intersectional framework that can inform legal analysis. Indeed, scholars have relied on Disability Justice to examine issues ranging from policing, punishment, reproductive justice, family courts, and immigration law and enforcement. They have pushed for remedies beyond narrow articulations of access and inclusion and towards social welfare, liberation, and forms of radical social change, like abolition. In *Centering Disability Justice*, Natalie Chin argues "that the future effectiveness of disability rights advocacy demands a re-centering that incorporates principles of Disability Justice."[51] L. Frunel and Sarah Lorr rely on the Disability Justice framework and ethos as a lens through which to understand and critique the family regulation system.[52] Zohra Ahmed and Jamelia Morgan use Disability Justice as a lens to analyze the nature of disability-based subordination in criminal court and in law enforcement interactions respectively.[53] Britney Wilson in *Making Me Ill*, describes how litigators have challenged structural racism stemming from environmental harms under the ADA, and the possibilities and limitations of such efforts to advance environmental and Disability Justice, including how these efforts might have adverse consequences for disabled people of color.[54] Finally, Robyn Powell calls for a "paradigm shift that supports the coalescence of the Disability Justice and reproductive justice movements" to respond to the "reproductive oppression experienced by people with disabilities."[55]

Disability Justice builds on DLS and disability rights in its attention to the social structures contributing to discrimination against disabled people. Disability rights and DLS both acknowledge the role of social structures and environments in contributing to the oppression of people with disabilities. However, Disability Justice goes further in its efforts to examine the precise functions of social structures, looking to: (1) operating logics that undergird legal rules and institutions; (2) the role of legal institutions and actors in constructing disability itself; (3) ableist origins of laws, policies, and practices; and (4) the intersectional nature of disability power and oppression in society. Disability Justice as an analytical tool centers on ableism as a form of oppression and can be regarded as similar to earlier efforts to center subordination as an analytical framework under disability rights frameworks. Though Disability Justice focuses intently on the role of identities in shaping the

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51. Chin, *supra* note 43, at 684.

52. L. L. Frunel & Sarah H. Lorr, *Lived Experience and Disability Justice in the Family Regulation System*, 12 COLUM. J. RACE & L. 478, 479 (2022).

53. Zohra Ahmed, *Criminal Court's Disability*, COLUM. L. REV. (forthcoming 2025); Morgan, *supra* note 4.

54. Wilson, *supra* note 44, at 1752–53.

55. Powell, *supra* note 43, at 1856.

lived experiences of disabled people, it does not end there.[56] For this reason, intersectionality is a core tenet of Disability Justice and in legal scholarship has been a tool for surfacing the precise nature and scope of the harms facing disabled people.[57] Here, the intersectional method is one attuned to both identities and structures and is an essential tool in identifying how social and structural conditions contribute to the oppression of disabled people while surfacing potential pathways toward radical change.[58]

Like DisCrit, legal scholars deploying Disability Justice acknowledge the limits of legal interventions and legal reforms in efforts to eradicate ableism in American society. Scholars deploying Disability Justice have looked to expand legal strategies beyond the typical silos and to develop novel or less common applications of traditional legal rules and approaches.[59] Though some legal scholars do engage with doctrinal reforms, as part of efforts to mitigate the harm to disabled people, other legal scholars focus on efforts beyond courts and beyond even the law itself.[60]

DisCrit and Disability Justice analyses already appear in legal scholarship. The task for this Article is to develop a robust method for how to apply the theory to legal analysis and scholarship. At present, the core tenets of DisCrit and principles of Disability Justice provide the starting point for analysis. However, these tenets and principles need to be adapted to the legal context. This adaptive work is done through the framework of Disability Critical Legal Studies (DCLS). DCLS incorporates DisCrit and Disability Justice analyses to form an overarching framework for legal analysis in American law. In this effort, and drawing heavily from DisCrit and Disability Justice, we identify the central tenets of DCLS which we elaborate on in the next section.

IV. DCLS METHOD FOR LEGAL ANALYSIS

A. Components

Legal analysis informs how legal disputes are resolved. In legal education, legal analysis is the foundation of the 1L curriculum and

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56. *See, e.g.*, Colker, *supra* note 25, at 1007; Weber, *supra* note 42, at 913; Bagenstos, *supra* note 27, at 418. This should not be taken to suggest that identity is not surfaced in DLS and disability rights approaches in American law. DLS and disability rights did acknowledge identities beyond disability in their analysis.

57. ASSOCIATED STUDENTS COMM'N ON DISABILITY EQUITY, *supra* note 50.

58. Morgan, *supra* note 28, at 218.

59. *See* sources cited *supra* note 44.

60. *Id.*

structures how law students learn legal writing. Though legal analysis is formulaic, it is neither objective nor neutral.[61] Law students are taught how to properly frame legal issues in order to achieve the legally correct outcome. Critical scholars know, of course, that the law and legal analysis are not the only thing that drives legal conclusions and the legal rules they produce. Perspective, politics, and judicial predilection can inform the outcome of cases. But for critical scholars, precise framing combats the silent erasure that happens when relevant factors are excised from legal analysis and rendered illegible in law. By accurately framing legal issues to incorporate relevant social and structural factors that inform the precise legal dispute, critical scholars maintain, legal analysis can be made responsive to the practical realities that shape law and its attendant results, including its harms. DCLS sets one frame for examining legal issues that implicate the concerns of disabled people and does so across areas of law.

Proper framing for legal analysis is also a foundational aspect of what makes good legal advocacy.[62] The framing of legal issues invariably informs the legal conclusion, which is why it is imperative that advocates accurately frame legal issues in ways that are likely to capture the relevant legal, policy, moral, equity, and justice concerns. For example, in a criminal case where a defense attorney moves to suppress evidence stemming from an unlawful stop and frisk, omitting race from legal questions related to whether the police had reasonable suspicion would inaccurately frame the legal issue in that case.[63] Omitting race would remove an inquiry into the ways in which race may have informed the officer's assessment as to reasonable suspicion. IRAC, detailed below, is a common method for such legal analysis.

By incorporating DCLS into legal analysis, we recognize that DCLS is a tool for disabled people and enhancing their power. In developing DCLS, we do not intend to argue that law and legal rights are the only tools (or even the preferred tools) for protecting disabled people or enhancing their power. The framework is simply there for advocates seeking to use law as *a* mechanism for protecting disabled people and enhancing their power within society. For clarity and simplicity, the DCLS matrix brings together IRAC with the core principles of DCLS.

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61. Jamelia N. Morgan, *Why Disability Studies in Criminal Law and Procedure?*, 71 J. LEGAL EDUC. 124, 135 (2021); Kimberlé W. Crenshaw, *Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT'L BLACK L.J. 1 (1998)

62. Bryan A. Garner, *The Deep Issue: A New Approach to Framing Legal Questions*, 5 SCRIBES J. LEGAL WRITING 1 (1994–95).

63. Daniel S. Harawa, *Coloring in the Fourth Amendment*, 137 HARV. L. REV. 1533 (2024); Jamelia Morgan, *Disability's Fourth Amendment*, 122 COLUM. L. REV. 489, 494–95 (2022).

B. IRAC Integration

IRAC is an acronym that stands for Issue, Rule, Application and Conclusion.[64] Together and in this order, these four components provide an established structure for conducting legal analysis in legal writing.[65] Traditionally, each component poses a central question that prompts legal students in organizing, focusing, and presenting their analysis cogently. However, as written IRAC requires students to make an additional effort to include a critical race and disability in their analysis. Moreover, IRAC alone does not provide a clear and effective structure for how to do so. Additional structure is needed for this method to not simply incorporate, but center DisCrit.

The DCLS matrix integrates DisCrit tenets, informed by Disability Justice, with IRAC legal analysis to guide this particular form of legal analysis. Each IRAC component incorporates guiding questions to ensure a critical examination of the intersection of race and disability justice in legal issues:

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64. *IRAC Methodology*, IRAC METHOD, https://www.iracmethod.com/irac-methodology [https://perma.cc/LAE2-QWP2].

65. *Id.*

Table 2: IRAC Components with DisCrit Integration

Component: IRAC Label	**Central Question**	**DCLS Questions**
Issue	What is the legal issue that the particular legal memo is seeking to address? What is the legal question that stems from the facts presented?	Does the legal issue involve a person with a disability or an issue that impacts disability? If people with disabilities are factored into your analysis, will the outcome harm the interests of disabled people as a group or a subset of disabled people? If so, which component of the community will be harmed? Do the core tenets of DCLS apply to this legal issue? How would the core tenets of DCLS alter how the issue is framed?
Rule	What are the legal rules that apply to adequately respond to the legal issue presented in the memo? Legal rules include things like legal elements, legal tests, defenses, limitations, and exceptions found in constitutional laws, statutes, case law, and regulations.	How does the specific legal rule interact with disability and race? What core tenets of DCLS apply to the precise legal issue? How does the legal rule reinforce or challenge ableism and racism? Does the rule recognize disability as a socially constructed category shaped by law and policy?
Application	How do the facts apply to the law?	How does the rule apply to the facts of the case when analyzed through a DCLS lens? In what ways does the application of the law uphold or dismantle ableist and racist structures? How would a DCLS framework reshape how the legal rule is applied to the given facts?
Conclusion	What is the conclusion to be drawn from the application?	What is the likely legal outcome, and how does it affect disabled people, particularly those at the intersection of race and disability? Does the conclusion reinforce or challenge normative legal assumptions about race and disability? How would a DCLS-informed legal conclusion differ from a traditional legal conclusion?

C. *DisCrit Integration*

Developing a method for DCLS requires operationalizing DisCrit within the legal framework. To facilitate its application, the tenets were assigned clear labels for ease of reference. Additionally, reordering the tenets became necessary to align with the logical progression of legal analysis. The following DisCrit-focused questions, informed by Disability Justice, supplement the IRAC framework by requiring an analysis of how law and policy uphold or challenge systemic ableism and racism:

Table 3: DisCrit Tenets as Analytical Lenses

Component: Tenet Label	**Key Questions for Legal Analysis**
Critical Context	What are the pertinent legal and historical precedents specific to race and disability? How do existing laws reflect ableist and racist histories?
Normative Logics	How are the forces of racism and ableism upholding dominant notions of normality in the law? How does the law define "normal" and exclude disability and race from that definition?
Decolonial Logics	How is the law shaped by the presumption of Whiteness and Ability as Property? Does the legal issue reflect colonial legacies that position whiteness and able-bodiedness as default norms?
Challenging Logics	Are the impacts of normative and decolonial logics being legally and socially challenged? If so, how? What are the legal mechanisms available to contest these logics?
Intersectional Identities	Does the law reduce identity to a singular category, or does it recognize the multi-dimensional lived reality of race and disability? How does the law treat people at the intersection of multiple marginalized identities?
Center Marginalized Voices	Are the voices of disabled people—particularly those from marginalized racial backgrounds—being centered in the legal framework? Who is shaping the legal arguments, and who is left out of the discussion?
Activism and Resistance	What are the limits of legal remedies? How can legal arguments be strengthened to promote broader coverage, legal protections, and equitable remedies?

D. DCLS Matrix

The primary purpose of this matrix is to expand legal analysis beyond traditional frameworks by ensuring that critical questions of race and disability are at the forefront of legal reasoning. It helps legal analysts recognize how laws can reinforce or dismantle structural inequities and encourages the development of legal arguments that prioritize marginalized communities. Specifically, the matrix seeks to:

- Critically examine how legal doctrines impact disabled people, particularly those from racialized communities.

- Challenge dominant legal norms that frame race and disability as separate or secondary concerns.

- Encourage advocacy and resistance by identifying legal mechanisms that promote broader protections and justice.

- By requiring analysts to assess the racial and ableist implications of legal rules and their applications, the matrix provides a systematic method for integrating DisCrit and Disability Justice perspectives into legal reasoning.

Rather than treating race and disability as secondary concerns, this matrix centers them in legal analysis, ensuring that scholars and practitioners can fully engage with the structural inequalities embedded in legal systems.

The following matrix and prompts therein ensure a systematic integration of DisCrit tenets with IRAC legal analysis, promoting a critical and intersectional approach to legal reasoning:

Table 4: DCLS Matrix

DisCrit	Issue	Rule	Application	Conclusion
Critical Context	Does the legal issue involve a person with a disability or an issue that impacts disability? How do legal and historical precedents related to race and disability shape the issue?	What legal rules apply, and how does it interact with race and disability? What historical and legal precedents contribute to the current rule?	How do historical understandings of disability and race impact the application of this law?	How does the conclusion reinforce or challenge historical legal norms regarding race and disability?
Normative Logics	How do racism and ableism shape the framing of this legal issue?	Does the rule reinforce dominant legal norms regarding race and disability?	How does the law's application uphold ableist and racist definitions of normality?	Does the legal outcome reinforce or challenge dominant legal norms regarding race and disability?
Decolonial Logics	How does the law frame the issue in ways that treat Whiteness and ability as property—granting control, enabling extraction, and legitimizing domination?	How does the legal rule assume Whiteness and able-bodiedness as default categories?	In what ways does the legal application reinforce decolonial assumptions about race and disability?	Does the conclusion challenge or perpetuate decolonial assumptions regarding race and disability?
Challenging Logics	Are there ongoing sociolegal efforts to challenge the normative and decolonial logics that shape how the issue is currently framed?	Does the legal rule acknowledge or challenge racialized and ableist structures?	Are existing legal and social mechanisms being used to challenge the application of this rule?	Does the legal conclusion provide avenues for future legal or social challenges?

DisCrit	Issue	Rule	Application	Conclusion
Intersectional Identities	Does the legal issue consider multi-dimensional identities, or does it reduce identity to a singular category?	Does the rule recognize or erase intersectional lived realities?	How does the law's application affect people at the intersection of multiply marginalized identities?	Does the conclusion support or dismiss an intersectional approach to race and disability?
Center Marginalized Voices	Whose perspectives are shaping the framing of this legal issue? Are disabled voices, particularly from marginalized backgrounds, included?	Does the rule center or exclude the lived experiences of disabled people, particularly those who are multiply marginalized?	Who is included in or excluded from legal reasoning? Are marginalized voices acknowledge d in case law or legal precedent?	Does the legal outcome reflect the perspectives and experiences of marginalized populations?
Activism and Resistance	What limitations in how the issue is framed by current legal frameworks have led to collective resistance or movement-building to confront racism and ableism?	How does the legal rule uphold or challenge structural racism and ableism, and how have communities responded to its exclusions through resistance or demands for reform?	How can the application of the law be reimagined through the influence of activism, lived experience, and community organizing to advance racial and disability justice?	What forms of activism, resistance, or collective action can help move beyond the limits of this legal outcome to build more just and inclusive futures?

The DCLS Matrix is a powerful tool that redefines legal analysis by placing race and disability at the forefront, challenging entrenched legal norms and logics. It equips legal scholars, practitioners, and students with the critical framework needed to expose and confront the systemic inequities embedded in the law.[66]

66. Templates offering a structured yet intuitive approach that seamlessly guides users through the complexities of DCLS analysis are available at *Discrit Legal Studies*, CTR. FOR RACIAL & DISABILITY JUST., CRDJustice.org/DCLS [https://perma.cc/FLC9-RHTZ].

E. Rubric

The theoretical framework provides the foundational concepts, assumptions, and perspectives that shape how a scholar approaches a question or analysis. It establishes the lens through which legal issues or cases are examined. From this framework, a method emerges—a structured way of applying the theory to analyze real-world issues. A rubric, however, is still needed to operationalize this method, providing clear criteria and measurable indicators to assess how well an analysis aligns with the theoretical framework. The rubric ensures that the method is applied consistently, guiding scholars in evaluating whether legal arguments effectively address intersectionality, power structures, and systemic inequities. In essence, the theoretical framework informs the method, and the method is structured into a rubric for practical application in research, teaching, and legal critique.[67]

The rubric should be used as a structured tool to evaluate, guide, and enhance legal analysis through a DCLS lens. Use the rubric's criteria to score each component. Offer specific, actionable feedback based on where the analysis aligns with or falls short of the rubric's expectations. If an analysis misses key DisCrit elements, the rubric helps identify gaps for revision. Over time, using the rubric should ensure students internalize DCLS, improving their approach to disability and the law. Templates for the rubric as well as the matrix can be found on our website at CRDJustice.org/DCLS.

F. Praxis

Each aspect of the IRAC analysis will be discussed in turn along with additional questions raised from a DCLS perspective.

> Fact Pattern: Rowley is a twenty-seven-year-old autistic Native American woman living in Cincinnati. Rowley has been on and off emergency holds and has been in and out of homeless shelters. Rowley currently has no stable employment. One day, an officer observes Rowley wandering in the parking lot of a shopping center. When the officer approaches, Rowley speeds up and yells at the officer to "leave me alone!" The officer speeds up, and now a crowd is forming. Rowley starts to yell at two bystanders observing the encounter. The officer tells Rowley that he wants to speak with her. Rowley refuses and keeps walking. The officer

67. Access to rubrics is available at *Discrit Legal Studies*, CTR. FOR RACIAL & DISABILITY JUST., CRDJustice.org/DCLS [https://perma.cc/FLC9-RHTZ].

grabs Rowley's arm and twists her to the ground and then pats her down for weapons. Rowley is later arrested for resisting arrest. In a later internal investigation, the officer asserted that in his opinion, Rowley's refusal to stop was consistent with someone who "either just committed a crime" or someone who is "concealing something whether it be a weapon or drugs."

Issue

Central question: What is the legal issue that the particular legal memo is seeking to address? What is the legal question that stems from the facts presented? Frame the legal question using a DCLS lens.

> Example: Was their reasonable suspicion for the investigatory stop?
>
> DCLS Example: Was their reasonable suspicion for the investigatory stop? Did race, gender, and disability inform what was then characterized by law enforcement as reasonable suspicion for the investigatory stop?

Rule

Central question: What are the legal rules that apply to adequately respond to the legal issue presented in the memo? Legal rules include things like legal elements, legal tests, defenses, limitations, and exceptions found in constitutional laws, statutes, case law, and regulations.

> Example: For an investigatory stop to comply with the Fourth Amendment, an officer must have "reasonable, objective grounds" and an "articulable" or "reasonable suspicion of criminal activity[.]"[68] During the stop, the officer must rely on "the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time."[69] Reasonable suspicion requires "some minimal level of objective justification" of criminal activity that is "more than an inchoate and

68. Florida v. Royer, 460 U.S. 491, 498–99 (1983).
69. *Id.* at 500.

unparticularized suspicion or hunch."[70] To determine whether an officer had reasonable suspicion, courts "must look at 'the totality of the circumstances' of each case to see whether the detaining officer ha[d] a 'particularized and objective basis' for suspecting legal wrongdoing."[71]

DCLS Example: The Fourth Amendment applies here, but so does the ADA. In cases where another body of law is implicated, that law should be viewed as part of the relevant legal regime.

Application

Central question: How do the facts apply to the law? Illuminate aspects of the legal rule applying the DCLS lens.

Example: The facts indicate that Rowley was screaming and making threatening statements to bystanders in a public area. Under the totality of the circumstances test, these behaviors provide objective, articulable facts that would lead a reasonable officer to suspect criminal activity may be occurring. The screaming and threatening language could reasonably suggest disorderly conduct or potential assault, giving officers minimal objective justification beyond a mere hunch. The officers used a brief investigatory stop as the least intrusive means to verify their suspicions about Rowley's behavior, which is consistent with Fourth Amendment requirements. The stop was limited in duration and scope to what was necessary to determine if criminal activity was occurring.

DCLS Example: When applying the reasonable suspicion standard through a DCLS lens, we must consider whether or not Rowley's apparent disability informed both her behavior and the officers' perception of that behavior. Rowley's screaming and what officers characterized as "threatening statements" must be contextualized by what the officer observed at the time and what might be signs of an apparent disability. Rowley's autism can manifest in sensory overload, communication differences, and

70. United States v. Sokolow, 490 U.S. 1, 7 (1989) (internal quotation marks omitted).
71. United States v. Arivizu, 534 U.S. 266, 273 (2002).

> atypical emotional expression. These behaviors, while perceived as threatening by neurotypical standards, represent disability-related communication differences and not merely indicators of criminal intent.

The totality of circumstances should include disability context—Rowley's behavior was consistent with responses to environmental stimuli and may not provide reasonable suspicion. The officer may have failed to distinguish between disability behaviors and genuine threats. That said, existing legal doctrine demonstrates how objective standards of reasonable suspicion are often built upon neurotypical and ableist assumptions.[72] From the facts, there is no way to know whether the police officer was aware of Rowley's disability and put on notice of the effect of such disability on Rowley's behavior. Indeed, under Title II of the ADA, the officer's approach of immediately detaining Rowley rather than attempting threatening communication methods might violate the duty to provide reasonable modifications in police procedures when interacting with disabled individuals.[73]

This case illustrates how facially neutral legal standards like "reasonable suspicion" can disparately impact disabled individuals when disability-related behaviors are criminalized through the lens of neurotypical behavioral norms. A proper application of the reasonable suspicion standard with ADA considerations would recognize that behaviors arising from disability should not automatically be interpreted as criminal indicators.

Conclusion

Central question: What is the conclusion to be drawn from the application? Answer to the legal question, bringing together issue, rule, and application through a DCLS lens.

> Example: The police had reasonable suspicion to stop Rowley. Rowley was screaming and made threatening statements to innocent bystanders.
>
> DCLS Example: It depends. The police may not have had reasonable suspicion to stop Rowley if disability is taken into account. Rowley's behaviors (screaming and

72. Morgan, *supra* note 63, at 520–36.
73. Morgan, *supra* note 4, at 1442–43.

statements made to bystanders) might not indicate reasonable suspicion of criminal activity.

V. CONCLUSION

In this article, we have synthesized critical frameworks from Disability Studies, Disability Legal Studies (DLS), Disability Critical Race Theory (DisCrit), and Disability Justice to propose a robust methodological approach for legal analysis—Disability Critical Legal Studies (DCLS). By highlighting both the overlaps and divergences among these critical perspectives, we have illustrated how integrating them through a structured DCLS Matrix and accompanying rubric can transform traditional legal reasoning. This approach prioritizes intersectional analyses of race and disability, explicitly challenging entrenched ableist and racist logics embedded within legal doctrines and their applications.

Through concrete examples presented in the Praxis section, we have demonstrated how DCLS can be operationalized within legal contexts, embedding intersectional considerations into each stage of the IRAC process. The systematic interrogation of normative assumptions and historical precedents provided by the DCLS Matrix equips scholars, practitioners, and activists with essential tools to effectively advocate for equity and dismantle structural oppression.

Moving forward, scholars and practitioners are encouraged to further refine and expand the DCLS methodology, applying it across diverse legal domains to enhance our collective understanding of how law simultaneously constructs and constrains intersectional identities. Embracing this critical, intersectional approach will be vital for achieving genuine legal reform and advancing justice for multiply marginalized communities. Future research should explore additional ways to deepen and broaden applications of DCLS within various areas of law and legal analysis.