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Getting It: The ADA After Thirty Years

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GETTING IT: THE ADA AFTER THIRTY YEARS†

Elizabeth F. Emens††

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† The title alludes to a book that Adrienne Asch intended to write, before her untimely death, about those who “get it” with regard to disability. For more discussion, see *infra* text accompanying note 104 (quoting a relevant passage).

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APPENDIX: REVISED LIST OF INSIDE INSIGHTS 680

ABSTRACT

On the thirtieth anniversary of the Americans with Disabilities Act (ADA), this essay examines the vital role that attitudes have played—and will play—in the success of this pathbreaking civil rights law. Drawing on the legacy of the late disability philosopher and bioethicist Adrienne Asch, the essay argues that the law alone cannot bring about the change that’s needed in the United States to realize the ADA’s promise. Attitudes to disability need to change. More people need to “get it” with regard to disability. The essay puts forward an updated account of what it means to get it and charts a path for shaping attitudes through law and other means in the years ahead.

INTRODUCTION

The ADA may prevent a local health club or public pool from turning me away if I go to exercise or swim, but it will do nothing to help me persuade a group of new friends that I could join them for a carefree afternoon at a lake. . . . In order for the ADA and other anti-discrimination laws to help people with disabilities truly enter the mainstream, judges and juries will need to learn far more than they typically know about how people with disabilities manage their lives.

— Adrienne Asch¹

The occasion for this symposium is the thirtieth anniversary of the Americans with Disabilities Act (ADA).² The occasion for my sitting down to begin writing my contribution is another anniversary: Seven years ago today our colleague and friend Adrienne Asch died.³ This essay

1. Adrienne Asch, Symposium, Facing the Challenges of the ADA: The First Ten Years and Beyond: Critical Race Theory, Feminism, and Disability: Reflections on Social Justice and Personal Identity, 62 OHIO STATE L.J. 391, 395–96, 397 (2001).

2. See Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (1990) (codified as amended at 42 U.S.C. § 12101).

3. See, e.g., Dorothy Roberts, *Adrienne Asch (1946–2013)*, NATURE (Dec. 8, 2013), <https://www.nature.com/articles/504377a>. There are many euphemistic ways to refer to death; though we never discussed it, given Adrienne’s penchant for realism over evasion, I suspect that Adrienne would prefer a simple statement of the fact of her death to phrases like “left this world” or “passed away.” I have also chosen to refer to her as Adrienne, to underscore her presence in this conversation. The today on which I began writing this essay was November 19, 2020.

is inspired by questions I believe Adrienne would be pressing us to ask about the progress thus far and the work that lies ahead.⁴

Of course I can't know precisely what questions Adrienne would be asking in this current, phenomenally challenging moment of interlocking pandemics:⁵ of COVID-19, which has killed well over three million people worldwide⁶ and over 550,000 people in the United States alone,⁷ disproportionately people with disabilities;⁸ of violent reactions to the uprisings against recent and longstanding racial injustice;⁹ and a crisis at the highest level of this country's political leadership.¹⁰ But I suspect one

4. Of course, Adrienne's questions would have changed over time, and I have no particular authority to say what hers would be by now; but I also think she would appreciate people recalling her earlier questions and pressing them forward, even if imperfectly. This is written in that spirit.

5. See, e.g., Dionne Brand, *On Narrative, Reckoning and the Calculus of Living and Dying*, TORONTO STAR (July 4, 2020), <https://www.thestar.com/entertainment/books/2020/07/04/dionne-brand-on-narrative-reckoning-and-the-calculus-of-living-and-dying.html>; Kelly Kultys, *Black History Month Webinar Addresses 'Interlocking Pandemics'*, FORDHAM NEWS (Feb. 22, 2021), <https://news.fordham.edu/colleges-and-schools/fordham-college-at-rose-hill/black-history-month-webinar-addresses-interlocking-pandemics/>.

6. *COVID-19 Dashboard*, JOHNS HOPKINS UNIV. OF MED., <https://coronavirus.jhu.edu/map.html> (last updated May 18, 2021).

7. *Id.*; *COVID Data Tracker*, CDC, <https://covid.cdc.gov/covid-data-tracker/#datatracker-home> (last updated May 17, 2021).

8. See, e.g., Maya Sabatello, Teresa Blankmeyer Burke, Katherine E. McDonald & Paul S. Appelbaum, *Disability, Ethics, and Health Care in the COVID-19 Pandemic*, 110 AM. J. PUB. HEALTH 1523, 1523 (2020) ("[T]he absence of strong national policies to accommodate the needs of this population significantly disadvantages the ability of many people with disabilities to protect themselves from COVID-19."); *COVID-19's Impact on People with Disabilities*, MASS. GEN. HOSP. (Dec. 17, 2020), <https://www.massgeneral.org/news/coronavirus/Covid-19s-impact-on-people-with-disabilities> ("As this particularly vulnerable segment of the population encompasses a variety of conditions and impairments, those with disabilities have faced many barriers throughout the pandemic.").

9. See, e.g., Erin Durkin, *NYPD Undermined Public Trust with Aggressive Protest Response, Watchdog Agency Finds*, POLITICO (Dec. 18, 2020, 10:21 AM), <https://www.politico.com/states/new-york/albany/story/2020/12/18/nypd-undermined-public-trust-with-aggressive-protest-response-watchdog-agency-finds-1348513> (describing an investigation report finding that "NYPD officers used 'excessive enforcement' against protesters—including kettling, or hemming in a group of demonstrators, mass arrests, and employing batons and pepper spray"); Katie Rogers, *Protestors Dispersed with Tear Gas So Trump Could Pose at Church*, N.Y. TIMES (June 1, 2020), <https://www.nytimes.com/2020/06/01/us/politics/trump-st-johns-church-bible.html>.

10. At the time I am completing a draft of this essay, the events of January 6, 2021, have recently occurred, combining violent assault on the Capitol sparked and not stopped by a sitting President, led by a mob of White Americans the President had misled, with a shocking complicity from multiple members of Congress. See, e.g., Charlie Savage, *Incitement to Riot? What Trump Told Supporters Before Mob Stormed Capitol*, N.Y. TIMES (Jan. 10, 2021), <https://www.nytimes.com/2021/01/10/us/trump-speech-riot.html>; Sabrina Tavernise & Matthew Rosenberg, *These Are the Rioters Who Stormed the Nation's Capitol*, N.Y. TIMES

central theme of her questions would focus on attitudes, specifically, how we can encourage better attitudes to disability—in other words, “getting it.”¹¹ (More soon on what *better attitudes* means—and on why Adrienne didn’t like the term *positive attitudes*.¹²)

Attitudes have played a major role in the first three decades of the ADA.¹³ The ADA was passed in 1990 with bipartisan support but met strenuous resistance in the courts.¹⁴ That judicial “backlash” was significant enough that the ADA then became one of a limited number of civil rights statutes to inspire a statutory intervention by Congress to broaden its scope.¹⁵ In 2008, Congress passed the ADA Amendments Act

(Jan. 7, 2021), <https://www.nytimes.com/2021/01/07/us/rioters-capitol.html>; see also Martin Pengelly & Richard Luscombe, ‘*Complicit in Big Lie*’: Republican Senators Hawley and Cruz Face Calls to Resign, *GUARDIAN* (Jan. 10, 2021), <https://www.theguardian.com/us-news/2021/jan/10/capitol-attack-republican-senators-josh-hawley-ted-cruz-face-resign>. This crisis came just at the moment when some were beginning to feel some relief from a longer-standing crisis of leadership. See, e.g., Jennifer Finney Boylan, *My Country Suddenly Turned on Me*, *N.Y. TIMES* (Feb. 3, 2021), <https://www.nytimes.com/2021/02/03/opinion/trump-biden-lgbtq.html> (“As Michael Gerber, editor of *American Bystander*, so poignantly noted on the day of the inauguration, ‘As a person with a disability, it’s just nice to have a president who won’t make fun of me.’”).

11. This phrase, here and in the title, refers to a book Adrienne intended to write on the subject. See the passage quoted in the epigraph above, *supra* text accompanying note 1, and more fully below, *infra* text accompanying note 104.

12. See *infra* text accompanying notes 27–33.

13. See, e.g., Doron Dorfman, *Fear of the Disability Con: Perceptions of Fraud and Special Rights Discourse*, 53 *L. & SOC’Y REV.* 1051, 1085 (2019); see also Elizabeth F. Emens, *Disabling Attitudes: U.S. Disability Law and the ADA Amendments Act*, 60 *AM. J. COMPAR. L.* 205, 206 (2012).

14. See, e.g., BACKLASH AGAINST THE ADA: REINTERPRETING DISABILITY RIGHTS (Linda Hamilton Krieger ed., 2003); Matthew Diller, *Judicial Backlash, the ADA, and the Civil Rights Model*, 21 *BERKELEY J. EMP. & LAB. L.*, 19, 19–20 (2000); Cheryl L. Anderson, *Deserving Disabilities: Why the Definition Under the Americans with Disabilities Act Should Be Revised to Eliminate the Substantial Limitation Requirement*, 65 *MO. L. REV.* 83, 83–85 (2000); Samuel R. Bagenstos, *Subordination, Stigma, and “Disability”*, 86 *VA. L. REV.* 397, 466–73 (2000); Chai R. Feldblum, *Definition of Disability Under Federal Anti-Discrimination Law: What Happened? Why? And What Can We Do About It?*, 21 *BERKELEY J. EMP. & LAB. L.* 91, 91–94 (2000); see also Robert D. Dinerstein, *The Americans with Disabilities Act of 1990: Progeny of the Civil Rights Act of 1964*, 31 *ABA HUM. RTS. MAG.* (2004); Stephen F. Befort, *Let’s Try This Again: The ADA Amendments Act of 2008 Attempts to Reinvigorate the “Regarded As” Prong of the Statutory Definition of Disability*, 2010 *UTAH L. REV.* 993, 993 (2010) (describing the bipartisan support for the original ADA, signed by President George Bush in 1990). On the particularly poor outcomes for disability plaintiffs in federal courts, see Ruth Colker, *The Americans with Disabilities Act: A Windfall for Defendants*, 34 *HARV. C.R.-C.L. L. REV.* 99, 99–100 (1999).

15. See Matthew R. Christiansen & William N. Eskridge Jr., *Congressional Overrides of Supreme Court Statutory Interpretation Decisions, 1967–2011*, 92 *TEX. L. REV.* 1317, 1319–20 (2014) (“Restorative overrides . . . are an important phenomenon and include other landmark statutes, such as the Pregnancy Discrimination Act of 1978, the Voting Rights Act Amendments of 1982 and the Voting Rights Act Reauthorization and Amendments Act of

(ADAAA), which explicitly rejected the Supreme Court's and other courts' interpretations of the ADA.¹⁶ As a number of scholars have argued, the ADA went beyond commonsense attitudes to disability, and that tension between widespread attitudes and the statutory scope inspired the courts to narrow its application.¹⁷ Now, signs of trouble are appearing again. Though early court decisions suggested judges were interpreting the ADAAA more faithfully,¹⁸ consistent with Congress's express demand,¹⁹ Nicole Buonocore Porter's most recent study finds signs of "another 'backlash'" in the second five years of post-ADAAA caselaw.²⁰

On this anniversary of the ADA, at a moment when interlocking pandemics are laying bare the ways law cannot serve justice without concurrent societal shifts, we would do well to consider the role of attitudes as we look ahead to the next thirty years.²¹ Public attitudes to

2006, the ADA Amendments Act of 2008, the Lilly Ledbetter Fair Pay Act of 2009, and the Family Smoking Prevention and Tobacco Control Act."); *see also id.* at 1480 app. 1.

16. ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553. *See, e.g.*, Barbara Hoffman, *The Law of Intended Consequences: Did the Americans with Disabilities Act Amendments Act Make It Easier for Cancer Survivors to Prove Disability Status?*, 68 N.Y.U. ANN. SURV. AM. L. 843, 847-48 (2013); H.R. REP. No. 110-730, pt. 1, at 7 (2008) ("The scope of protection under the ADA was intended to be broad and inclusive. Unfortunately, the courts have narrowed the interpretation of disability and found that a large number of people with substantially limiting impairments are not to be considered people with disabilities. The Committee hopes to re-establish clear and comprehensive protections . . ."); 154 CONG. REC. S8342-45 (2008) ("The ADA Amendments Act rejects the high burden required in these cases and reiterates that Congress intends that the scope of the Americans with Disabilities Act be broad and inclusive.").

17. *See, e.g.*, Diller, *supra* note 14, at 22 (noting that "[r]esistance to the ADA may result from a failure to comprehend and therefore to accept the premises underpinning the statute"); Emens, *supra* note 13, at 207 ("The law was out ahead of common sense (the common sense of society, and thus of most legislators and judges), and so courts did what they often do in such moments: they narrowed the law to better fit their common sense.").

18. *See* Nicole Buonocore Porter, *The New ADA Backlash*, 82 TENN. L. REV. 1, 46 (2014) (reporting on "strong evidence that . . . courts [were] follow[ing] Congress' mandate to broadly interpret the definition of disability under the ADA").

19. ADA Amendments Act of 2008 § 2(b)(2-4), 122 Stat. at 3553-54 (explicitly rejecting requirements and standards announced in key Supreme Court cases).

20. Nicole Buonocore Porter, *Explaining "Not Disabled" Cases Ten Years After the ADAAA: A Story of Ignorance, Incompetence, and Possibly Animus*, 26 GEO. J. ON POVERTY L. & POL'Y 383, 392, 409, 411 (2019). Whereas Porter's study of the first five years under the ADAAA found just seven cases in which courts incorrectly determined that the plaintiff was not disabled and eight poorly litigated cases, Porter's study of the second five years found 210 cases in which courts "erroneously" concluded that the plaintiff was not disabled within the meaning of the law. *See id.* at 385-86. As Porter acknowledges, "[I]t is admittedly hard to tell whether mistakes made by the courts are good faith but erroneous interpretations of the law, or whether the prior backlash against the ADA is rearing its head again," but the trend is certainly concerning. *Id.*

21. *See* Jasmine E. Harris, *The Frailty of Disability Rights*, 169 U. PA L. REV. 29, 32-33 (2020) ("This Essay surfaces a broader, unresolved issue in disability law laid bare by the

disability and disabled people²² will likely do much to shape the ongoing reception of the ADA both within and beyond the courts. As Adrienne told us, in the passage in the epigraph pulled from an essay she wrote for the tenth anniversary of the ADA, the statute may force a pool operator to allow her access to the pool, but the law will not create the experience of inclusion that she seeks at the pool.²³ And attitudes shape what happens in the courts. As the backlash to the ADA demonstrated, widespread beliefs and feelings about disability guide the interpretations and applications that judges bring to the cases they hear²⁴—and those cases cast a shadow in which many more individuals bargain.²⁵ If law and advocacy are ever going to “rectify the tilt” that excludes and disadvantages people with disabilities, to invoke Chai Feldblum’s vivid metaphor,²⁶ then changing public attitudes will be a key part of that shift.

In honor of Adrienne, this essay will examine four questions: What are the better and worse attitudes and beliefs about disability in circulation in this moment? How can we cultivate better attitudes, individually and collectively, through and beyond law? What dimensions of better attitudes have been neglected in law and scholarship? And what questions lie ahead in the pursuit of better attitudes and, thus, better realization of the ADA’s promise? The rest of the essay will follow the arc of those questions.

current pandemic—that disability rights have never had the public understanding and buy-in necessary to exercise and interpret disability laws in a way that would generate largescale structural reform. As a result, when people with disabilities are seen (and treated) as unequal, deficient, and incapable, legal enforcement of antidiscrimination laws is, at best, seen as optional and aspirational, creating space for the current manifestations of disability discrimination during the coronavirus crisis. These problems are compounded when medical supplies, personnel, and time are limited.”); *see also* Michael Selmi, *Interpreting the Americans with Disabilities Act: Why the Supreme Court Rewrote the Statute, and Why Congress Did Not Care*, 76 GEO. WASH. L. REV. 522, 571–75 (2008). For a recent popular statement of this argument, see Jasmine E. Harris, ‘*The Hill We Climb*’ to Overcome Stereotypes About Disabilities, SAN FRAN. CHRON. (Jan. 25, 2021), <https://www.sfchronicle.com/opinion/openforum/article/The-Hill-We-Climb-to-overcome-stereotypes-15894496.php>.

22. This essay uses both “people-first” and “disability-first” language, for reasons I and others have discussed elsewhere. *See, e.g.*, Elizabeth F. Emens, *The Art of Access: Innovative Protests of an Inaccessible City*, 47 FORDHAM URB. L.J. 1359, 1360 n.1 (2020).

23. *See supra* text accompanying note 1 (quoting Asch in the opening epigraph).

24. *See supra* notes 14–20.

25. *See, e.g.*, Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950, 997 (1979).

26. *See* Chai R. Feldblum, *Rectifying the Tilt: Equality Lessons from Religion, Disability, Sexual Orientation, and Transgender*, 54 MAINE L. REV. 159, 183 (2002).

I. NAMING BETTER ATTITUDES TO DISABILITY: THEN & NOW

Much personal narrative and social science writing about the experience of having a disability includes stories of indignities at the hands of strangers, neighbors, co-workers, friends, and family—and then having to be told that your interpretation is always wrong. . . . Some examples of events that occurred during a two-week period while this essay was my main intellectual focus, and therefore causing me to be especially aware of the impact of routine events: I was asked by an examining physician whether, because I was blind, I needed her assistant to “come in and help you get dressed”; I was told by a bus driver and several passengers that I must sit down, even though several other bus passengers were already standing on the crowded bus; I was pushed to the front of a line of customers at a bank, although blindness does not have any relationship to the ability to stand and wait one’s turn in a bank line; I was spoken about rather than spoken to—“put her here” was said to a friend of mine as we walked into a crowded room to join a meeting; a friend was described by others not as my friend, but as my “assistant” and my “guide”; a friend of more than twenty years explained to me that my distress, irritation, and frustration were unreasonable responses to people who were “trying to do the right thing.”

— Adrienne Asch²⁷

Adrienne was deeply concerned about attitudes to disability, but she never liked that I wrote about encouraging “positive attitudes” to disability. When she and I sat on panels together or discussed my writing using this term,²⁸ she objected. She preferred to talk about *comfortable attitudes* or *accurate attitudes*.²⁹ Complex debates surround the question of whether disability (or, more precisely here, by some accounts, *impairment*³⁰) is best understood as a “neutral trait,” neither good nor

27. Asch, *supra* note 1, at 395, 396 n.21.

28. E.g., Elizabeth F. Emens, *Framing Disability*, 2012 U. ILL. L. REV. 1383, 1399–00 (2012).

29. See Elizabeth F. Emens, *What’s Left in Her Wake: In Honor of Adrienne Asch*, in 44 HASTINGS CTR. REP. 19, 20 (2014).

30. See, e.g., Mary Crossley, *The Disability Kaleidoscope*, 74 NOTRE DAME L. REV. 621, 700 (1999) (“[S]ome disability studies scholars take impairment to refer to explicit kinds of biological anomalies in order to maintain the distinction between impairment and disablement.”).

bad.³¹ I will sidestep those debates here, except to observe that Adrienne made important contributions, as both an author³² and an editor.³³

Despite our disagreement over the term “positive attitudes,” I suspect that Adrienne and I would have converged on the need for *better* attitudes, if I had thought of the phrasing at the time. Adrienne would very likely agree that realistic attitudes to disability would be far more positive than the widespread attitudes today. Since I am sadly unable to ask her, though, I proceed with this terminology of *better attitudes* without knowing whether I could have persuaded her.

31. See, e.g., Adrienne Asch & David Wasserman, *Making Embryos Healthy or Making Healthy Embryos: How Much of a Difference Between Prenatal Treatment and Selection?*, in THE “HEALTHY” EMBRYO: SOCIAL, BIOMEDICAL, LEGAL AND PHILOSOPHICAL PERSPECTIVES 201, 204–06 (Jeff Nisker et al. eds., 2010); Leslie Francis, *Disability and Philosophy: Applying Ethics in Circumstances of Injustice*, 42 J. MED. ETHICS 35, 35–36 (2016) (engaging these debates while introducing papers presented at a “mini-symposium on philosophy and disability” at Syracuse University); see also David Wasserman & Adrienne Asch, *The Uncertain Rationale for Prenatal Disability Screening*, 8 VIRTUAL MENTOR: ETHICS J. AM. MED. ASS’N 53, 55 (2006) (“To assume that most genetically detectable disabilities impair the prospects for individual and family flourishing in a way that other potentially detectable characteristics do not is truly to stigmatize disability.”); ELIZABETH BARNES, *Bad Difference and Mere Difference*, in THE MINORITY BODY: A THEORY OF DISABILITY 54 (2016) (“Is disability simply another way of being a minority—something that makes you different but not something that makes you worse off? Or is disability something that’s bad for you—not merely something that makes you different, but something that makes you worse off because of that difference? I’m going to defend the view—common within the disability rights movement, but often dismissed as incredible by philosophers—that disability is neutral with respect to well-being.”); Anita Silvers, *On the Possibility and Desirability of Constructing a Neutral Conception of Disability*, 24 THEORETICAL MED. & BIOETHICS 471, 471 (2003) (“Progress depends on constructing a neutral conception of disability”).

32. See Adrienne Asch, *Disability Equality and Prenatal Testing: Contradictory or Compatible?*, 30 FLA. STATE U. L. REV. 315, 326 (2003) (“If having a capacity is good, is not having a particular ability bad, negative, or “dis-valuable?” My answer is that having a capacity can be good, but the absence of capacity is simply an absence; it need not be seen as negative, “dis-valuable” to be blind any more than it is negative or “dis-valuable” to be shorter than some people, or to be mystified by higher mathematics The absence of a capacity is not necessarily “bad”; the opposite of having a capacity is not having it; having it and not having it can be equally legitimate ways of living a life.”); Asch & Wasserman, *Making Embryos Healthy or Making Healthy Embryos: How Much of a Difference Between Prenatal Treatment and Selection?*, *supra* note 31, at 201; Wasserman & Asch, *The Uncertain Rationale for Prenatal Disability Screening*, *supra* note 31, at 55. On the distinction in social psychology between stereotypes (thoughts and beliefs) and attitudes (feelings), see, for example, Anthony G. Greenwald & Mahzarin R. Banaji, *Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes*, 102 PSYCHOL. REV. 4, 6 (1995).

33. For instance, Adrienne edited *Prenatal Testing and Disability Rights*, which contained Deborah Kent’s extraordinary piece, *Somewhere a Mockingbird*. Deborah Kent, *Somewhere a Mockingbird*, in PRENATAL TESTING AND DISABILITY RIGHTS (Erik Parens & Adrienne Asch eds., 2000).

So, if we seek better attitudes, the next question is their content: What are the better attitudes (and better beliefs) that we should be trying to cultivate? (Throughout, I will use the term *attitudes* as a shorthand for both beliefs and attitudes, although the distinction between them is important in some contexts.³⁴) This Part will set out a list of better attitudes, drawn from earlier work, and reflect on some points of resonance during the COVID-19 pandemic, before the next Part proceeds to improve this conceptualization.

A. An Initial Sketch of the “Inside View” of Disability

In 2012, I attempted to create a short list of those better beliefs and attitudes.³⁵ The context was an article focused on the highly negative way disability is “framed” at key decision-making junctures around disability—such as prenatal testing (which frames disabilities as “defects” to be avoided); drivers’ education (which frames disability as a terrible consequence of risky driving); and tobacco labeling (which frames disability as the frightening result of smoking).³⁶ My purpose in that article was to urge reframing these moments around insights derived from the “inside view” of disability—that is, the more knowledgeable, realistic view that one tends to develop through personal experience or close contact embedded in an informed disability community context.³⁷

After some more nuanced discussion, I attempted to summarize these “inside insights” about disability, to give content to the suggestion of improving the messages that are promoted at these framing moments.³⁸ Here is the initial list, with citations omitted:

- (1) Disability happens to many people, indeed, most people, if they are lucky enough to live that long. (Age and disability potentially create interest convergence; accessibility is a form of social insurance for everyone.)
- (2) The fact that disability could happen to anyone does not, however, mean that nondisabled people will relate to disabled people, or disability rights, with empathy; it may instead lead to “existential anxiety” and a resistance to thinking about disability or people with disabilities.
- (3) Disability need not be as frightening as it sounds to many outsiders. Quality of life with a disability is typically much better than nondisabled people predict it would be. For example, after an initial adjustment

34. See Greenwald & Banaji, *supra* note 32, at 5–6.

35. See Emens, *supra* note 28, at 1405–07.

36. See *id.* at 1410.

37. *Id.* at 1383.

38. See *id.* at 1405.

period, people who become paraplegic tend to return to something near to their pre-disability state of happiness. And while there is much variability across families, some work suggests that in the aggregate families with children with physical and intellectual disabilities exhibit patterns of overall well-being and adjustment similar to families without children with disabilities.

(4) Life with a disability is a life in which disability is one, often small, piece. When imagining disability, nondisabled people often focus so much on the disability that they do not appreciate the ways that adaptation makes disability a part of life like anything else.

(5) Life with a disability can be active and athletic. For example, people with disabilities can and do participate in competitive and recreational sports, both in standard sports settings and in disability-specific sports and competitions.

(6) Accessibility has begun to make disability more livable and much less isolating than it once was (for instance, in periods of widespread institutionalization). Together with developments in health care and physical therapy, these changes have increased not just quality of life but life expectancy for some disabilities, such as Down syndrome.

(7) Much of what makes disability disabling is the way that the environment is structured. Think, for example, about the ways that opportunities are limited for nondisabled people who go places with a disabled person; for those (nondisabled) people, accessibility determines what restaurants, theaters, or homes they can enter, although no medical condition limits them.

(8) Changing the environment to accommodate disability may not be granting “special rights,” but may just involve broadening the kinds of accommodations provided in order to include those people neglected by typical design principles.

(9) Adaptations and accommodations for disability can benefit more than just the disabled person who needs them. These innovations can benefit other disabled people, as well as nondisabled people.³⁹

In compiling this list, I acknowledged that the list would necessarily entail “generalizations” that are “of course overbroad and subject to debate and refinement.”⁴⁰ In the next Part, I will engage in one step in that process of refinement. The rest of this Part will first identify some resonance of the above list with the first year of the COVID-19 pandemic.

39. *Id.* at 1406–07.

40. Emens, *supra* note 28, at 1405 (noting that the aim there was “to sketch some broad-brush ideas that might nonetheless be useful in laying the groundwork for trying, in the rest of the Article, to design strategies for bringing the outside view closer to the inside view”).

B. The Inside & the Outside View of Disability in the ADA's Thirtieth Year

Some of the inside insights on the above list—and their diagnosis of the outside view—ring even more true in the wake of this pandemic year. For starters, when has it ever been clearer (per #1) that anyone could become disabled at any time—whether through short-term infection or “long haul”⁴¹ symptoms?

The next item (#2) is perhaps more striking: The common vulnerability shared by disabled and nondisabled people might seem to predict empathy for disabled people, but instead, all too often, predicts *existential anxiety*—the impulse to push disabled people away, separate and stigmatized, as less than human or as more expendable humans.⁴² This attitudinal impulse can be seen in the verbal abuse and even violence faced by people even suspected of having COVID-19—some of that abuse racialized around a virus the U.S. President referred to as the “Chinese virus.”⁴³ This grim reality can be seen in the protocols that have

41. On the COVID “long haulers,” see, for example, *Long Haulers: Why Some People Experience Long-Term Coronavirus Symptoms*, U.C. DAVIS MED. CTR. (Feb. 8, 2021), <https://health.ucdavis.edu/coronavirus/covid-19-information/covid-19-long-haulers.html>.

42. See Harlan Hahn, *The Politics of Physical Differences: Disability and Discrimination*, 44 J. SOC. ISSUES 39, 43 (1988) (defining existential anxiety as “the perceived threat that a disability could interfere with functional capacities deemed necessary to the pursuit of a satisfactory life”).

43. See, e.g., Donald Moynihan & Gregory Porumbescu, *Trump's 'Chinese Virus' Slur Makes Some People Blame Chinese Americans. But Others Blame Trump.*, WASH. POST (Sept. 16, 2020), <https://www.washingtonpost.com/politics/2020/09/16/trumps-chinese-virus-slur-makes-some-people-blame-chinese-americans-others-blame-trump/>; see also *Statement Denouncing Coronavirus-Related Violence & Discrimination Against Asians & Asian Americans*, STUDENT LEADERS OF THE ASIAN AMERICAN HISTORY AND THE LAW READING GROUP, COLUM. UNIV., <https://change-center.law.columbia.edu/sites/default/files/content/COVID-19%20Statement%20Denouncing%20Racism%20%26%20Violence%20-%20Google%20Docs.pdf> (last visited May 13, 2021) (declaring support for resolutions condemning COVID-19-related acts of racism toward the Asian and Asian-American community); Hannah Tessler, Meera Choi & Grace Kao, *The Anxiety of Being Asian American: Hate Crimes and Negative Biases During the COVID-19 Pandemic*, 45 AM. J. CRIM. JUST. 636, 638 (2020) (“Because this virus has been identified as foreign, for some individuals, their feelings have been expressed as xenophobia, prejudice, and violence against Asian Americans.”); Eric Westervelt, *Anger and Fear as Asian American Seniors Targeted in Bay Area Attacks*, NPR (Feb. 12, 2021, 12:49 PM), <https://www.npr.org/2021/02/12/966940217/anger-and-fear-as-asian-american-seniors-targeted-in-bay-area-attacks> (“These attacks taking place in the Bay Area are part of a larger trend in anti-Asian American/Pacific Islander hate brought on in many ways by COVID-19, as well as some of the xenophobic policies and racist rhetoric that were pushed forward by the previous administration.” (quoting Manju Kulkarni, executive director of the Asian Pacific Policy and Planning Council)).

restricted disabled people's access to life-saving treatment for coronavirus;⁴⁴ removed drugs and ventilators from people with long-term disabilities to redistribute to "healthy" people now sick with coronavirus;⁴⁵ and given people with disabilities lower vaccine priority than older people.⁴⁶ The necessity of educating the public about the disability paradox (#3)—the gap between perception and reality of living with serious disabilities like paraplegia—has never been clearer, as lawyers and advocates have fought to challenge the discriminatory triage protocols.⁴⁷

Also at this time, we have seen the benefits for nondisabled people of practices, technologies, and architectural features previously designed or used as accommodations by disabled people (#9).⁴⁸ These include telecommuting, which has previously faced a circuit split as to whether

44. See, e.g., Harris, *The Frailty of Disability Rights*, *supra* note 21, at 34; Samuel R. Bagenstos, *Who Gets the Ventilator? Disability Discrimination in COVID-19 Medical-Rationing Protocols*, 130 YALE L.J. F. 1, 2 (2020) (observing that "crisis standards of care adopted by hospitals and state agencies often employ disability-based distinctions"); Ari Ne'eman, *I Will Not Apologize for My Needs*, N.Y. TIMES (Mar. 23, 2020), <https://www.nytimes.com/2020/03/23/opinion/coronavirus-ventilators-triage-disability.html>; Alice Wong, *I'm Disabled and Need a Ventilator to Live. Am I Expendable During This Pandemic?*, VOX (Apr. 4, 2020, 10:20 AM), <https://www.vox.com/first-person/2020/4/4/21204261/coronavirus-covid-19-disabled-people-disabilities-triage>.

45. See, e.g., Neil Romano & Samuel Bagenstos, *Don't Deny Ventilators to Disabled Patients*, WASH. POST (Apr. 6, 2020, 6:00 AM), <https://www.washingtonpost.com/outlook/2020/04/06/coronavirus-ventilators-disabled-people/> (describing state policies, particularly in Washington and Alabama, that deny vital care to disabled people); Joseph Shapiro, *Oregon Hospitals Didn't Have Shortages. So Why Were Disabled People Denied Care?*, NPR (Dec. 21, 2020, 3:21 PM), <https://www.npr.org/2020/12/21/946292119/oregon-hospitals-didnt-have-shortages-so-why-were-disabled-people-denied-care> (describing an instance when a person with a disability was "being inappropriately influenced about life-sustaining treatment. And the physician in that case talked about the quote 'low quality of life' of a person with a disability" (quoting Jake Cornett, executive director of Disability Rights Oregon)).

46. See, e.g., *CDC's COVID-19 Vaccine Rollout Recommendations*, CTR. FOR DISEASE CONTROL & PREVENTION (Feb. 19, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations.html> (prioritizing people age seventy-five and older in "phase 1b" versus people sixteen to sixty-four with underlying medical conditions in "phase 1c"); Jessica Contrera, *People with Disabilities Desperately Need the Vaccine. But States Disagree on When They'll Get It.*, WASH. POST (Jan. 13, 2021, 7:00 AM), <https://www.washingtonpost.com/dc-md-va/2021/01/13/disabled-coronavirus-vaccine-states/> ("[A]s guidance from the federal government has been translated into vaccine distribution plans made by states, those with disabilities have been downgraded to lower priority status.").

47. See, e.g., Bagenstos, *supra* note 44, at 14 ("To the extent that disabilities do harm the quality of one's life, that is often because of discrimination and societal decisions that have rendered significant opportunities inaccessible. To use those harms as a justification for denying life-saving treatment to disabled people imposes a form of 'double jeopardy.'").

48. See *infra* App.: Revised List of Inside Insights ((13) [9]).

this is a reasonable accommodation, with some judges skeptical that work could really be done from home, when it was requested by disabled people.⁴⁹ Third-party benefits of architectural features designed for disability and exapted⁵⁰ for broader use in this time include wide aisles, in supermarkets for instance, which are designed for wheelchairs but which also enable everyone to keep social distance; or buttons that permit low-touch door opening.⁵¹ Services like food delivery and curbside pick-up for groceries—which one disabled commentator described as “a convenience for hungry users, but a life-saver for those of us with disabilities”—have become vastly more important to nondisabled customers during the pandemic; at the same time, their accessibility to disabled users has not kept pace.⁵² Also, on the darker side, we have seen people attempting to appropriate the ADA to support their anti-mask demands⁵³—sometimes the same people “who tend to complain that laws like the ADA are too much of a burden on business, or too much of a curb on freedom.”⁵⁴

49. See Elizabeth F. Emens, *Integrating Accommodation*, 156 U. PA. L. REV. 839, 869–75 (2008) (describing the circuit split demonstrated in *Vande Zande v. Wisconsin Department of Administration* and *Borkowski v. Valley Central School District*); see also *EEOC v. Ford Motor Co.*, 782 F.3d 753, 762–65 (6th Cir. 2015) (concluding that the employer did not violate the duty of reasonable accommodation by refusing telecommuting request).

50. On the term “exapted,” see Stephen Jay Gould & Elisabeth S. Vrba, *Exaptation: A Missing Term in the Science of Form*, 8 PALEOBIOLOGY 4, 6 (1982); see also Emens, *supra* note 49, at 855 (explaining that the “broader uses of disability-related innovations might be analogized to what evolutionary theorists call exaptations, which are traits (i.e., aptations, the progress-neutral variation on the term adaptation) that emerge for one purpose and then turn out to be useful for another purpose”).

51. See, e.g., Emens, *supra* note 49, at 845–65; see also, e.g., Jerry L. Mashaw, *Against First Principles*, 31 SAN DIEGO L. REV. 211, 223–24 (1994) (noting that “accommodations made to deal with the special needs of the ‘disabled’ may very well benefit others who are not so classified”).

52. Kristen Lopez, *The Food Delivery Revolution Is Leaving Disabled Customers Behind*, FOOD & WINE (Oct. 10, 2019), <https://www.foodandwine.com/news/food-delivery-apps-accessibility-dominos-pizza-case>; see also *Robles v. Domino’s Pizza LLC*, 913 F.3d 898, 904–05 (9th Cir. 2019), *cert. denied*, 140 S. Ct. 122 (2019); Jayson Blair, *Online Deliveries Lighten Burden for the Disabled; Empowerment, Not Just Convenience, For an Unexpected Class of Consumer*, N.Y. TIMES (Sept. 5, 2000), <https://www.nytimes.com/2000/09/05/nyregion/online-deliveries-lighten-burden-for-disabled-empowerment-not-just-convenience.html>.

53. See, e.g., Doron Dorfman, *Being Anti-Mask Doesn’t Make You Disabled*, NEWSDAY (May 21, 2020, 12:01 PM), <https://www.newsday.com/opinion/coronavirus/coronavirus-covid-19-pandemic-wearing-masks-disabled-anti-mask-1.44819571>.

54. Andrew Pulrang, *What I’ve Learned as a Disabled Person from the Covid-19 Pandemic*, FORBES (Dec. 28, 2020, 12:44 PM), <https://www.forbes.com/sites/andrewpulrang/2021/12/28/what-ive-learned-as-a-disabled-person-from-the-covid-19-pandemic/?sh=47c3ebc85e97> (continuing, “It’s a case of ‘the ADA for me, but not for thee’”).

In sum, the significance of the inside view, as well as the persistent prevalence of the outside view, has been on full display in this past year—the first year of the COVID-19 pandemic and the thirtieth year of the ADA. The outside view has been visible in the highest reaches of government, public health, and the media, who have implied the expendability of disabled people from the outset of this pandemic: “The general public was told not to worry about Covid-19 because it would mainly harm people with ‘pre-existing conditions.’”⁵⁵

II. BUILDING A BETTER LIST OF BETTER ATTITUDES

I suspect that because characteristics like ethnicity, race, sex, and disability are all interwoven in my, or anyone’s, experience, I can agree with all those writers who remind us that each characteristic is influenced by the others that make up our lives. . . . Perhaps social constructionists of disability will conclude . . . that even in a transformed society where racism, sexism, and disability discrimination are negligible portions of individual and social life, some aspects of life will nonetheless be more difficult or impossible if disabled, and that the human variations of race are easier to accommodate than the variations of differing health or ability. I believe it possible that disability is not entirely reducible to social construction, and that some forms of aesthetic experiences and some sorts of physical activities may be precluded by physiology alone. People who are deaf will not hear music, but they can have the aesthetic experiences of enjoying painting, and those who are blind will not see sunsets, but they can hear birdsongs and oceanwaves; people who use wheelchairs will not run marathons even if they do race in them and cross the finish line before the runners. For now, as we struggle to retain the gains we thought we had won when the ADA became law, as we examine racism and sexism in a post-civil rights world where people of color still earn less than similarly educated Whites, and where women in two-career families still perform more domestic work and childcare than their male partners, we can say that there is much work to do on all fronts.

— Adrienne Asch⁵⁶

Many improvements could be made to the list of inside insights in the previous Part, as I noted when first publishing it. Indeed, such a list is an inevitable failure; nothing so complex could ever be satisfactorily summed up in a short list.⁵⁷ And yet brief articulations enable people to

55. *Id.*

56. Asch, *supra* note 1, at 418, 422–23.

57. I find some solace in the invitation from Samuel Beckett to “fail better” as well as in Robert McRuer’s unforgettable inversion of the acknowledgements trope:

pick up ideas and move them around, to push them further and improve them. I therefore published the list, and I have invited suggestions from others, informally, and invite them again now, more formally.⁵⁸ In this Part, I will offer several revisions that seem important, many of them inspired by Adrienne or by this moment in time, though the list will continue to evolve.

These revisions fall into seven categories: intersectionality and overlap with other key axes of subordination (such as race and gender); the role of sexuality; discussion of psychosocial or psychiatric disabilities; the dramatic misfiring of outsiders' attempts to "get it" around disability; the significance of community, artistic production, and other forms of meaning-making around disability; and the lack of a unitary inside view of disability. These will each be considered in turn.

A. Intersectional & Overlapping Lenses on Identity

Disability cannot be well understood in isolation from other axes of identities, or from other disabilities.⁵⁹ This point is not new, but its absence from the inside insights is especially striking in this time of interlocking pandemics and racial reckoning.⁶⁰ Indeed, it may reflect what Chris Bell has called "White Disability Studies."⁶¹

An item focused on the intersectional nature of identity and the utility of analogies across identity categories is needed here. The disability rights movement has also demonstrated the utility, at times, of focusing on specific identities or disabilities, in order to excavate or organize around distinctive features of the experience, the discrimination,

There is a tradition [of saying] . . . in the acknowledgments sections of academic books . . . that others, while they might have contributed to the successful aspects of the project, are not to be held accountable for a book's "main defects[.]" From where I sit, . . . this strikes me as a tradition worth inverting. If there is anything disabled, queer, or crip about this book, it has come from my collaborative work with those named above, and many others. I take responsibility, however, for the moments when crip energies and ideas are contained or diluted in what follows, and I know that others will continue to push the work of this book, and the movements that made it possible, beyond those moments of containment.

ROBERT McRUER, *CRIP THEORY: CULTURAL SIGNS OF QUEERNESS AND DISABILITY* xv (2006).

58. Please email me if you have suggestions: eemens@law.columbia.edu.

59. See Tina Goethals, Elisabeth De Schauwer & Geert Van Hove, *Weaving Intersectionality into Disability Studies Research: Inclusion, Reflexivity, and Anti-Essentialism*, 2 J. DIVERSITY & GENDER STUD. 75, 77–78 (2015).

60. See, e.g., Brand, *supra* note 5.

61. Chris Bell, *Introducing White Disability Studies: A Modest Proposal*, in *THE DISABILITY STUDIES READER* 275 (Lennard J. Davis ed., 2d ed., 2006).

or the desired remedies entailed there.⁶² This point could be incorporated as a new “(7.5)”:

(7.5) Disability occupies one axis of identity and its impact on a life varies widely, especially based on other intersecting axes of identity, including race, gender, sexual orientation, and socioeconomic status, as well as additional disabilities.⁶³ Recognizing the ways the experience of disabilities and disability discrimination varies by intersectional aspects of identity is important in its own right.⁶⁴ Thinking about disability in relation to other axes of identity—and across different types of disabilities that may coexist in an individual—is also important because this critical lens can help illuminate overlapping forms of subordination and inform a *disability justice* perspective.⁶⁵ The value of

62. See, e.g., *id.* at 276.

63. See, e.g., Alice Abrokwa, “When They Enter, We All Enter”: Opening the Door to Intersectional Discrimination Claims Based on Race and Disability, 24 MICH. J. RACE & L. 15, 20–21 (2018) (“People who exist at the intersection of race and disability experience a multi-dimensional form of discrimination that is continually at risk of being flattened to a single dimension—either race or disability—due to the limitations of our collective understanding of intersectionality.”); Jamelia Morgan, *Toward a DisCrit Approach to American Law*, 4, 6–7 (Nov. 14, 2020), in DISCRIT EXPANDED: INQUIRIES, REVERBERATIONS & RUPTURES (Subini Ancy Annamma, Beth Ferri & David Connor. eds., forthcoming 2021) (“An intersectional approach to, and examination of, disability law reveals how the ADA, despite its broad protections, leaves disabled people of color, in particular, under-protected.”); Beth Ribet, *Emergent Disability and the Limits of Equality: A Critical Reading of the UN Convention on the Rights of Persons with Disabilities*, 14 YALE HUM. RTS. & DEVELOP. L.J. 155, 192 (2011); Natalie Chin, *Centering Disability Justice*, 71 SYRACUSE L. REV. 683 (forthcoming 2021); Jasmine Harris, *Disability on the Frontlines*, 106 CORNELL L. REV. ONLINE 26 (forthcoming 2021) (on file with the Syracuse Law Review); cf. generally Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1277 (1991) (providing foundational analysis and theory of intersectionality focused on race and sex).

64. See, e.g., *The Harriet Tubman Collective*, TUMBLR, <https://harriettubmancollective.tumblr.com> (last visited May 13, 2021); Simi Linton & Kevin Gotkin, *DANT Report 2019*, DISABILITY ARTS NYC (Feb. 2019), <https://web.archive.org/web/20191221231333/http://disabilityarts.nyc/report>.

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

thinking *across* axes of identity (or different disabilities) does not undercut the value, however, of sometimes thinking *within* the silo of disability alone (or of a specific disability). Thinking across axes of identity and thinking within axes of identity both have value.⁶⁶

Any list of identities leaves some out, so this item, though longer than others on the list of inside insights, seems especially incomplete. The addition of #7.5 is nonetheless an addition that Adrienne would surely approve, having written about the interplay and intersections between Critical Race Theory and disability rights, theory, and law. Indeed, the epigraph to this Part is drawn from an article she wrote focused largely on these relationships two decades ago, for a symposium on the first ten years of the ADA.⁶⁷

B. Sexuality & Intimacy

In the epigraph that began this essay, Adrienne described the law's impotence to affect whether "a group of friends" includes her in a swimming trip, even now that the law makes a swimming pool formally accessible to her.⁶⁸ Adrienne was as concerned with dynamics surrounding romantic and sexual relationships as with friendship.⁶⁹ In fact, her interest in the subject was what prompted a mutual acquaintance to introduce us when I was first writing about *intimate discrimination*—or the ways people discriminate in their dating, sex, and marital lives.⁷⁰

An addition to the list could look like this:

66. See, e.g., Linton & Gotkin, *supra* note 64; Khiara M. Bridges, *The Intersection of Race and Disability*, in *CRITICAL RACE THEORY: A PRIMER* 301–16 (2019); Kimani Paul-Emile, *Blackness As Disability?*, 106 *GEO. L.J.* 293 (2018); Joshua Sealy-Harrington, Introduction, *Seeing Power, Unseeing People: Disaggregating Identity* 18–20, 22–26 (May 17, 2021) (unpublished J.S.D. dissertation, Columbia Law School) (on file with *Syracuse Law Review*).

67. See Asch, *supra* note 1, at 392–94.

68. See *supra* text accompanying note 1.

69. Cf. *supra* text accompanying notes 1, 27 (quoting passages from Asch about discrimination in social settings).

70. Elizabeth F. Emens, *Intimate Discrimination: The State's Role in the Accidents of Sex and Love*, 122 *HARV. L. REV.* 1307, 1310 (2009).

(5.5) Dating, sex, and marriage are vibrant parts of many disabled people's lives,⁷¹ in contrast to the typical norm of desexualization,⁷² the discriminatory attitudes (including "aesthetic anxiety"⁷³ and narrow ideals of beauty and sex⁷⁴), and the limited sexual options (including in "dating markets" and in institutional settings⁷⁵) often imposed by the outside view.

This item names only a small sliver of the vast complexities in this area. A few of the omitted complexities include, for instance, the hypersexualization and fetishization of disability that can occur on the outside view, including in interaction with race;⁷⁶ the way disability can intersect with race, sexuality, gender identity, age, and other dimensions of identity to shape dating prospects, discrimination, and norms;⁷⁷ and the role of law in shaping and structuring these norms, historically and still to this day.⁷⁸

71. See, e.g., TOM SHAKESPEARE, KATH GILLESPIE-SELLS & DOMINIC DAVIES, *THE SEXUAL POLITICS OF DISABILITY: UNTOLD DESIRES* 107 (Shakespeare et al. eds., 1997); Michelle Fin & Adrienne Asch, *Disabled Women: Sexism Without the Pedestal*, 8 J. SOCIO. & SOC. WELFARE 233, 235, 237. See generally SIMI LINTON, *MY BODY POLITIC* (2006) (recounting one woman's experience with dating, sexual relationships, and marriage, inter alia).

72. See, e.g., Tom Shakespeare, *Disability, Identity and Difference*, in *EXPLORING THE DIVIDE: ILLNESS AND DISABILITY* 94, 109 (Colin Barnes & Geof Mercer eds., 1996) (observing that "disability is a very powerful identity, and one that . . . has the power to de-sex people, so that people are viewed as disabled, not as men or women, straight or gay"); Anita Silvers, *Reprising Women's Disability: Feminist Identity Strategy and Disability Rights*, 13 BERKELEY WOMEN'S L.J. 81, 90 (1998); see also Emens, *supra* note 70, at 1318, 1325, 1330 (contrasting the norm of desexualization for disability with the norm of homogamy for race and heterogamy for sex).

73. See, e.g., Harlan Hahn, *The Appearance of Physical Differences: A New Agenda for Research on Politics and Disability*, 17 J. HEALTH & HUM. SERVS. ADMIN. 391, 392 (1995); see also Jasmine E. Harris, *The Aesthetics of Disability*, 119 COLUM. L. REV. 895, 897, 930 (2019); Jasmine E. Harris, *Sexual Consent and Disability*, 93 N.Y.U. L. REV. 480, 505 (2018).

74. See, e.g., BEAUTY IS A VERB 107–09 (Sheila Black, Jennifer Bartlett & Michael Northen, eds., 2011). See generally SHAKESPEARE, *supra* note 71.

75. See, e.g., Michael L. Perlin, *Hospitalized Patients and the Right to Sexual Interaction: Beyond the Last Frontier?*, 20 N.Y.U. REV. L. & SOC. CHANGE 517, 519 (1994); Emens, *supra* note 70, at 1338; Harris, *Sexual Consent and Disability*, *supra* note 73, at 495; Deborah W. Denno, *Sexuality, Rape, and Mental Retardation*, 1997 U. ILL. L. REV. 315, 379 (1997).

76. See, e.g., Harris, *Sexual Consent and Disability*, *supra* note 73, at 483–84 (discussing the Anna Stubblefield case); Emens, *supra* note 70, at 1343.

77. See, e.g., Russell K. Robinson, *Masculinity as Prison: Sexual Identity, Race, and Incarceration*, 99 CALIF. L. REV. 1309, 1356, 1358, 1375 n.382, 1400 (2011).

78. See, e.g., Jacobus tenBroek, *The Right to Live in the World: The Disabled in the Law of Torts*, 54 CALIF. L. REV. 841, 843 (1966); Samuel R. Bagenstos & Margo Schlanger, *Hedonic Damages, Hedonic Adaptation, and Disability*, 60 VAND. L. REV. 745, 747–48 (2007); Russell K. Robinson, *Unequal Protection*, 68 STAN. L. REV. 151, 154 (2016); Emens, *supra* note 70, at 1315–16. In this area, the law seems clearly to suggest that disability is a

C. Psychiatric/Psychosocial Disabilities

Improving the list of inside insights would also mean speaking more directly to what's overtly missing: As I stated in *Framing Disability*, the list's coverage was "limited to physical and cognitive disabilities."⁷⁹ The most obvious omission is therefore psychosocial or psychiatric disabilities.⁸⁰ I was trying to create one uniform list, and some important data pushed in opposite directions for psychosocial disabilities. Specifically, the point about how the hedonic experience of disability tends to be better than perceived or predicted by outsiders to it—after an initial adjustment period—appears to cut the other way for psychiatric disabilities.⁸¹ That is, outsiders to psychiatric disability are inclined to think the experience of what is sometimes called "mental illness" is less, rather than more, difficult than the reality—contrary to the so-called disability paradox for physical disabilities.⁸²

To address this gap, I would therefore add another item, which we can call "(3.5)" for now:

"bad difference," not just a "different difference." See Michael Ashley Stein, *Same Struggle, Different Difference: ADA Accommodations as Antidiscrimination*, 153 U. PA. L. REV. 579, 583–84 (2004); BARNES, *supra* note 31, at 55; see also Michael E. Waterstone, *Disability Constitutional Law*, 63 EMORY L.J. 527, 541 (2014). I thank Jasmine Harris for the final point.

79. Emens, *supra* note 28, at 1405.

80. See, e.g., Covo, *infra* note 123, at 257 (explaining that, "disability and human rights advocates and scholars . . . have embraced the term 'psychosocial disability' instead of 'mental illness' or 'mental disorder,' which are commonly used in medical discourse"); Faraaz Mahomed, Michael Ashley Stein & Vikram Patel, *Involuntary Mental Health Treatment in the Era of the United Nations Convention on the Rights of Persons with Disabilities*, 15 PLOS MED. 1 (Oct. 2018) (defining psychosocial disabilities as "disabilities arising from mental health conditions"); Leslie Salzman, *Guardianship for Persons with Mental Illness: A Legal and Appropriate Alternative?*, 4 ST. LOUIS U.J. HEALTH L. & POL'Y 279, 279 n.2 (2011) (noting that the term "psychosocial disability" is "preferred over the more commonly used term of 'mental illness'").

81. The original footnote discussion of this was as follows: "Some work cites the following as exceptions to the disability paradox: some psychiatric impairments and conditions involving chronic pain, see Cass R. Sunstein, *Illusory Losses*, 37 J. LEGAL STUD. S157, S167 (2008), and progressive or degenerative conditions such as multiple sclerosis, see Shane Frederick & George Loewenstein, *Hedonic Adaptation*, in WELL-BEING: THE FOUNDATIONS OF HEDONIC PSYCHOLOGY 302, 312 (Daniel Kahneman et al. eds., 1999). As to chronic pain conditions, even pain can be separated into sensory and affective components, with reductions in the affective component while the sensory component stays the same or increases. *Id.* at 311. As to progressive or degenerative conditions, it is hard to say whether adaptation truly does not occur or if the rate of change of the condition is greater than the rate of adaptation. *Id.* at 312." Emens, *supra* note 28, at 1392 n.33.

82. Cf. Elizabeth F. Emens, *Against Nature*, in 52 NOMOS: EVOLUTION AND MORALITY 293, 304–05, 308 (James E. Fleming & Sanford Levinson eds., American Society for Political and Legal Philosophy 2012) (discussing the ways that outsiders' disbelief can lead to a pull toward essentialism rather than constructivism).

(3.5) Psychosocial disabilities and invisible disabilities (like chronic pain) should not be as mysterious as they sound to some outsiders.⁸³ Disbelief in the reality or depth of a person's pain or suffering typically characterizes outsiders' views of these disabilities.⁸⁴ A more realistic view would recognize the real pain and suffering while not reducing an individual's experience to that pain and suffering (which also means being open to any positive dimensions).⁸⁵ This leads to the next point.

The next point on the original list, number four, is that "Life with a disability is a life in which disability is one, often small, piece." That also warrants a parenthetical sentence: "(And even where disability is a big piece of a life, the disability is not the whole of the individual or the life.)" So it reads as follows:

(4) Life with a disability is a life in which disability is one, often small, piece. When imagining disability, nondisabled people often focus so much on the disability that they do not appreciate the ways that adaptation makes disability a part of life like anything else. (And even where disability is a big piece of a life, the disability is not the whole of the individual or the life.)

Lastly, a prior point would also require small edits for clarification:

(3) Disability need not be as frightening as it sounds to many outsiders. Quality of life with a *physical* disability, *even a substantially limiting one*,⁸⁶ is typically much better than nondisabled people predict it would be. For example, after an initial adjustment period, people who become paraplegic tend to return to something near to their pre-disability state of happiness. And while there is much variability across families, some work suggests that in the aggregate families with children with physical and intellectual disabilities exhibit patterns of overall well-being and adjustment similar to families without children with disabilities.

83. See generally ELYN R. SAKS, *THE CENTER CANNOT HOLD: MY JOURNEY THROUGH MADNESS* (2007) (demystifying psychiatric/psychosocial impairment); see also Jasmine Harris, *Taking Disability Public*, 169 U. PA. L. REV. (forthcoming 2021) (discussing the value of publicizing disability rather than hiding it).

84. See Emens, *supra* note 82, at 304–05, 308.

85. Cf., e.g., TIM HOWARD, *THE KEEPER: THE UNGUARDED STORY OF TIM HOWARD* (2015) (describing how his OCD contributed to his focus as a soccer goalkeeper).

86. This language echoes the ADA's definition of disability, but it is not meant in a precise legal sense; rather, this language is meant to acknowledge that the so-called disability paradox has emerged in studies even with regard to impairments that involve significant limitations for the individual and as perceived by outsiders.

D. Getting It Wrong—& Wronger

The 2012 list mentions some ways that nondisabled people don't "get it"—misunderstanding or misapprehending living with a disability.⁸⁷ Adrienne, with her interest in correcting misperceptions of disability, was particularly enamored of empirical work by Elaine Makas on the ways that nondisabled people get it wrong about disability—and notably, sometimes get it even more wrong when they try harder.⁸⁸ I discussed this research from Makas in the textual material preceding the 2012 list.⁸⁹ But as part of revising this list now, in honor of Adrienne, I think Makas's findings should feature explicitly.

Here is my earlier explanation of Makas's findings:

The problem of discrimination is not just a matter of nondisabled people not trying hard enough to behave appropriately. For example, Elaine Makas has shown that nondisabled subjects exhibited less-positive attitudes toward disability when they were trying to impress a disabled person. Makas asked nondisabled students to agree or disagree with a series of statements about disability, first truthfully, and then under "fake-well" instructions. Under the "fake-well" conditions, students were told that they should answer "in a way that they felt reflected 'the most positive attitudes toward persons with disabilities,'" as if they were "really trying to impress" someone who was giving out a \$10,000 prize for the "student who had the most positive attitudes toward disabled people." Makas found that on a substantial number of items the students in the "fake-well" condition showed less favorable attitudes than in the truthful condition, under the disabled respondents' view of positive attitudes toward disability. In other words, when the nondisabled subjects tried to display what they thought were more positive attitudes to disability, they displayed less positive attitudes, viewed from an inside perspective.⁹⁰

So, for instance, subjects were asked to indicate their degree of agreement or disagreement with the following statement: "If a person with epilepsy becomes angry with people over little things, it should be overlooked because of his/her disability."⁹¹ Disabled subjects (and nondisabled subjects who had been identified by disabled people who know them well as having "extremely positive attitudes toward people with disabilities") both tended to disagree with this statement.⁹² Student controls were more

87. See *supra* Part I.A (2012 list).

88. Elaine Makas, *Positive Attitudes Toward Disabled People: Disabled and Nondisabled Persons' Perspectives*, 44 J. SOC. ISSUES 49, 56, 58 (1988).

89. See Emens, *supra* note 28, at 1400.

90. *Id.* at 1400 (citing Makas, *supra* note 88, at 53–56).

91. Makas, *supra* note 88, at 55–56.

92. *Id.*

likely to agree with the statement and—most strikingly—students who were told to present the best possible attitudes to disability (to try to impress someone giving out a prize for “the most positive attitudes toward disabled people”) were *even more likely* to agree with the statement.⁹³ In other words, under this “fake well” condition, student attitudes got even further from the attitudes of disabled people (and nondisabled people who get it) than when students were just answering honestly. This finding suggests that simply trying harder to improve one’s attitudes is not only not enough, but may backfire. More is needed to improve attitudes.

A brief encapsulation of this could appear as a new point “(4.5)” as follows:

(4.5) Common stereotypes and paternalistic attitudes toward disability are so pervasive and accepted that, when nondisabled people who haven’t been exposed to the inside view try to project positive attitudes to disability, they sometimes “get it” even less.

This item does not portray the specifics of how nondisabled outsiders can get it wrong, but it captures the striking point that getting it right requires real change, not just good intentions.⁹⁴ As Adrienne wrote in the opening epigraph to this essay, “In order for the ADA and other anti-discrimination laws to help people with disabilities truly enter the mainstream, judges and juries will need to learn far more than they typically know about how people with disabilities manage their lives.”⁹⁵

E. The Value of Community & Artistic Production

The 2012 list, although mentioning positive dimensions of disability culture, gave short shrift to the value that springs from disability and disability culture.⁹⁶ A general point about value could join with specific points about the artistic production from disability communities to add a point (10) to the list:

(10) Disability is frequently associated with costs and limitations, on the outside view. But the inside view appreciates the benefits and opportunities disability can provide—for instance, as a source of community and solidarity; as a bridge to individual identity development and meaning-making; and as a site of creativity and

93. *Id.*

94. See, e.g., Harris, *The Aesthetics of Disability*, *supra* note 73, at 901.

95. Asch, *supra* note 1, at 397.

96. See *supra* Part I.A (2012 list).

artistic production.⁹⁷ The realist inside view does not ignore actual hardships and suffering that can accompany disability or impairment (often due to context or discrimination, per #[7]), but it also perceives the benefits and opportunities.

F. The Lack of a Unitary Inside View

The title of Sam Bagenstos's *Law and the Contradictions of the Disability Rights Movement* captures a critical point about the multiplicity of views within what I'm calling the "inside view" of disability.⁹⁸ The original list of inside insights aimed to simplify, and so it breezed past this important observation—well-understood within the inside view.⁹⁹ But after this past year, I cannot leave unstated the widely varying perspectives contained in this growing list.¹⁰⁰ In the words of an incisive commentator, describing one axis of conflict in particular relief this year:

Disabled people feel more than one way about Covid-19, much as we do about "health and safety" in general. . . . Some disabled people are frankly terrified of Covid-19. We are afraid of the medically established higher risk of the virus being life threatening to us, afraid of being overlooked, and afraid of being denied equal access to treatment because of our disabilities. This leads many disabled people to strongly resent and oppose those who assert and flaunt their individual freedom not to take precautions. At the same time, some disabled people feel more acutely hurt by isolation, dislocation, disruption, and restrictions, than by fear of Covid-19 itself. They speak out about being unjustly restricted. They interpret precautions meant to protect people, (*especially* at-risk disabled and chronically ill people like themselves), as simply more examples of ableist and discriminatory control over their lives. Most disabled people probably feel some combination of the both, and with good reason. . . . But often these responses from disabled people in particular have less to do with Covid conspiracy theories and more with the longstanding conflict within the disability community and disability policy, between safety and freedom, between preventing

97. See, e.g., Doron Dorfman, *Re-Claiming Disability: Identity, Procedural Justice and the Disability Determination Process*, 42 L. & SOC. INQUIRY 195, 222 (2017); Katie Eyer, *Claiming Disability*, 101 B.U. L. REV. 547, 555 (2021).

98. See SAMUEL R. BAGENSTOS, *LAW AND THE CONTRADICTIONS OF THE DISABILITY RIGHTS MOVEMENT* 3–4 (2009).

99. Anthologies powerfully capture this view, for instance, most recently, Alice Wong's collection: *DISABILITY VISIBILITY: FIRST-PERSON STORIES FROM THE TWENTY-FIRST CENTURY* (2020).

100. For instance, the antipaternalism vs. welfare tensions or the universalism vs. antistatist perspective on the definition of disability, both of which Bagenstos discusses. See BAGENSTOS, *supra* note 98.

harm and affirming “the dignity of risk.” This conflict existed long before Covid-19, and it’s equally polarizing and difficult to reconcile.¹⁰¹

This vast terrain could be inadequately summarized as follows:

(11) The inside view of disability is multi-vocal—full of complexity, like humanity itself.

The internal diversity of the category is not unique to disability, though it is more apparent here, in ways that present legal and other challenges.¹⁰²

This is a revised starting point for setting out the inside view. An Appendix puts all the items—old, revised, and new—into a single fifteen-point list.¹⁰³ Ongoing improvements are welcome and invited.

III. CULTIVATING BETTER ATTITUDES

Adrienne [Asch] spoke in recent years about writing a book based on interviews with nondisabled people who “get it” with regard to disability. . . . Over the years, she gave glimpses into what she thought prepared a nondisabled person to get it: Such a person has to be comfortable enough not knowing all the answers and not being in control at all times. A person who gets it responds to his own confusion or ignorance about the ways of a disabled person by thinking, “I don’t actually know how X is going to do Y, but I’ll take his word for it that he can and see what happens.” A person who gets it, as Adrienne portrayed him or her, is inclined to “see life as an adventure.”

— *What’s Left in Her Wake: In Honor of Adrienne Asch*¹⁰⁴

Whether society “gets it” with regard to disability, as Adrienne puts it here, matters for disability rights law in two main ways. First, attitudes to disability matter to the implementation of the law, to the law in action, both in judicial interpretations and applications of the law and in frontline legal actors’ decisions and behaviors under the law. On the former, the law in the courts, we can think most obviously of the tortuous history of the ADA, discussed earlier.¹⁰⁵ On the latter, the law on the frontlines, we can think of, for instance, the ways employers and in-house counsel conduct the interactive process about accommodations and reach

101. Pulrang, *supra* note 54.

102. See generally, e.g., Michael Ashley Stein & Michael E. Waterstone, *Disability, Disparate Impact, and Class Actions*, 56 DUKE L.J. 861 (2006) (discussing the relative absence of the class action device in disability discrimination employment cases).

103. See *infra* App.: Revised List of Inside Insights.

104. Emens, *supra* note 29, at 19–20.

105. See *supra* text accompanying notes 13–21.

conclusions about whether to grant particular requests¹⁰⁶—or of Adrienne’s example of bus drivers who decline to announce bus stops or who turn off the automatic announcer, despite the law’s requiring them to deliver these announcements.¹⁰⁷

Second, attitudes to disability matter to the impact of law and social change in the domains that law cannot reach directly, including intimate relationships, even if law plays a structural role in shaping them—for instance, because laws about housing, employment, and public accommodations shape who meets whom and how.¹⁰⁸ Attitudes will be central to the possibilities in these realms, although law does not directly inform choices.

This Part loosely tracks these points, first by focusing on law’s role in changing attitudes and then on mechanisms through and beyond law for changing attitudes.

A. *The Role of Law*

No matter how court decisions chip away at its reach, and no matter how poorly federal agencies enforce its provisions, the law provides a tangible assertion that the federal government believes in the moral equality and worth of people with disabilities and believes that people can benefit from, and contribute to, the common life of the society.

— Adrienne Asch¹⁰⁹

In the epigraph that began this essay,¹¹⁰ Adrienne invited us to see formal legal actors as human individuals who need education about the lives of people with disabilities. As the lines that begin this Part suggest, law’s potential role in improving attitudes and reducing stereotypes also goes beyond the slice of law that is litigation. This Part takes a broad view of law when asking the question, *what role can law play in helping to shape better attitudes to disability?*

106. See generally, e.g., Shirley Lin, *Bargaining for Integration*, 96 N.Y.U. L. REV. (forthcoming 2021), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3791028 (discussing the interactive process surrounding workplace accommodations and critiquing its limits).

107. See Asch, *supra* note 1, at 401.

108. See *supra* Part II.B.; see also Emens, *supra* note 70, at 1374–75; Russell K. Robinson, *Structural Dimensions of Romantic Preferences*, 76 FORDHAM L. REV. 2787, 2787 (2008).

109. Asch, *supra* note 1, at 398–99.

110. See *supra* text accompanying note 1; see also Asch, *supra* note 1, at 397 (“In order for the ADA and other anti-discrimination laws to help people with disabilities truly enter the mainstream, judges and juries will need to learn far more than they typically know about how people with disabilities manage their lives.”).

The following list captures some ways that law may contribute to improving attitudes:

- (1) *Integration Mandates*. Integration can improve material conditions for disabled people, which is vital in its own right and can also influence attitudes by creating the conditions for counter-stereotypical role models.¹¹¹ Integration mandates—in schools, workplaces, public accommodations, housing, inter alia¹¹²—can lead, most obviously, to contact and relationships.¹¹³ The form of integration ordered by law matters: For instance, requirements that disabled students have a certain amount of exposure to nondisabled students project a message of one-way benefits.¹¹⁴ And integration that precludes close contact discourages intimate relationships, whereas the “architecture of intimacy” supports it.¹¹⁵ Integration mandates are far from a cure-all, of course. These mandates require enforcement, which is no small hurdle, and important work has questioned the emphasis on integration for its own sake¹¹⁶ as well as its potential for unintended consequences.¹¹⁷
- (2) *Symbolism and Framing*. The symbols law uses for disability, and the frames given to decisions surrounding disability, can

111. See *infra* text accompanying notes 159, 163.

112. Jamelia Morgan has recently offered powerful arguments for applying *Olmstead*'s integration mandate to the prison context. See Jamelia N. Morgan, *The Paradox of Inclusion: Applying Olmstead's Integration Mandate in Prisons*, 27 GEO. J. ON POVERTY L. & POL'Y 305 (2020); see also Lynn McDonough, *Prison Reform and Olmstead*, REGULATORY REV. (Apr. 13, 2021), <https://www.theregreview.org/2021/04/13/mcdonough-prison-reform-and-olmstead/> (“Morgan notes that, despite this progress, the integration mandate has rarely been applied to jails and prisons—the most isolated settings of all. Attempting to apply the mandate in prisons, however, reveals a ‘paradox of inclusion,’ given that ‘the central features and functions of prisons’ are fundamentally at odds with ‘the animating spirit of *Olmstead*.’ According to Morgan, resolving this paradox could transform the rights of all people who are incarcerated—and not just those with disabilities.”).

113. See BAGENSTOS, *supra* note 98, at 4.

114. See, e.g., Individuals with Disabilities Education Act, Pub. L. No. 101-476, 104 Stat. 1142 (codified as amended 20 U.S.C. § 1412(a)(5)(A)) (requiring that participating states establish “procedures to ensure that[,] . . . [t]o the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled”); see also, e.g., Disability Advocates, Inc. v. Paterson, 653 F. Supp. 2d 184, 208 (E.D.N.Y. 2009) (saying repeatedly, in a judgment that adult homes run by the state of New York violate the integration mandate of Title II of the ADA and *Olmstead*, that these “Adult Homes limit the development of relationships with people who do not have disabilities”).

115. Cf. Emens, *supra* note 70, at 1381–82 (discussing the “architecture of intimacy”).

116. See generally Ruth Colker, *The Disability Integration Presumption: Thirty Years Later*, 154 U. PA. L. REV. 789 (2006) (critiquing the “integration presumption” in public education).

117. See Harris, *The Aesthetics of Disability*, *supra* note 73, at 913–14.

shape attitudes. Scholars and political actors have recognized the value of replacing staid “handicapped” signs with “more active image[s]” such as “a wheelchair user in motion”¹¹⁸ and, more recently, suggested replacing the wheelchair-user symbols, in general, with symbols that aim to encompass a broader range of disabilities.¹¹⁹ Formal resolutions and days recognizing disability rights can signal recognition and respect.¹²⁰ Other work proposes that we design the legal framing of decisions that may implicate future disabilities or possible disabilities—such as around prenatal testing or drivers education—to encompass the inside view of disability, rather than the more typical frame of the outside view.¹²¹

- (3) *Publicity*. Stigma surrounding disability can spur privacy protections that may further reinforce the underlying stigma.¹²² Moreover, other legal rules can inadvertently discourage or chill disclosure of disability, thus preventing the stereotype disruption that could result from outspoken role models in sports and other areas.¹²³ Redesigning legal and institutional rules to respect the autonomy and privacy decisions of disabled people, while supporting opportunities for thoughtful disclosure

118. Jasmine E. Harris, *Processing Disability*, 64 AMER. U.L. REV. 457, 532 (2015); see also Doron Dorfman [Un]Usual Suspects: *Deservingness, Scarcity, and Disability Rights*, 10 U.C. IRVINE L. REV. 557, 609–10 (2020) (discussing debates surrounding the traditional symbol).

119. Sarah Dawood, *Why the Wheelchair Symbol Should Be Rethought to Include “Invisible Disabilities”*, DESIGNWEEK (Aug. 1, 2018 4:54 PM), <https://www.designweek.co.uk/issues/30-july-5-august-2018/why-the-wheelchair-symbol-should-be-rethought-to-include-invisible-disabilities/> (discussing the Visibility93 campaign); see also Dorfman, *supra* note 118, at 609–11 & n.227 (discussing this campaign and proposing an alternative approach of “apply[ing] a broader pallet of colors, each signifying a different type of impairment,” or of “placing affirmative statements on public information markers” on a model of ““framing rules”” (citing Emens, *supra* note 28)).

120. See, e.g., Arlene S. Kanter, *What a Day to Recognize People with Disabilities Should Mean to Us All*, ADVANCE LOCAL MEDIA (Dec. 3, 2020), <https://www.syracuse.com/opinion/2020/12/what-a-day-to-recognize-people-with-disabilities-should-mean-to-us-all-commentary.html> (expressing that “Dec. 3, . . . International Day of People with Disabilities[,] . . . is a day for all of us to think about how we as a country, as local communities, and as individuals, support the rights of people with disabilities”).

121. See generally Emens, *supra* note 28.

122. See, e.g., Harris, *supra* note 118, at 488–89; Harris, *supra* note 83; Emens, *supra* note 49, at 903–04.

123. See, e.g., Yaron Covo, *Gambling on Disability Rights*, 43 COLUM. J.L. & ARTS 237, 256, 281, 287 (2020) (arguing that anti-tipping rules in sports gambling could discourage athletes’ disclosure of psychosocial disabilities and that these rules should be narrowed and adjusted to support the debiasing work of disabled role models in sports).

(publicity), could help to shift attitudes locally and more generally.¹²⁴

- (4) *Expressive Dimensions of Law*. As the epigraph asserts, the mere existence of a law like the ADA can wield expressive power.¹²⁵ Jurisdictions that expressly prohibit hate crimes against disabled people, as U.S. federal law began to do in 2009,¹²⁶ make an expressive statement through the law on the books, in addition to the impact any prosecutions may have.¹²⁷ Moreover, text and structure can promulgate certain concepts or ideas about disability. A prime example of this is the way that the structure of the ADA suggests an embrace of the social model of disability—for instance, through the definition of disability, which includes “regarded as” disabled, implying that a person can be disabled through another’s attitudes or beliefs,¹²⁸

124. See, e.g., *id.* at 237, 290 (“[A]nti-tipping rules may encourage athletes to mask their impairments, leading to a chilling effect on the disclosure of information about mental health in the sporting arena. . . . Since voluntary disclosure of nonpublic information about mental health is a socially desirable practice, the rules must be amended to ensure the flow of such information.”); Harris, *supra* note 83; Jasmine E. Harris, *The Privacy Problem in Disability Antidiscrimination Law*, in *DISABILITY, HEALTH, LAW AND BIOETHICS* 159, 167–68 (Glenn Cohen, Carmel Shachar, Anita Silvers, Michael Ashley Stein eds., 2020) (“We may consider crafting legislative or administrative carrots to encourage voluntary disclosure of disability identity. One way the state (intentionally or unintentionally) nudged normative shifts in perceptions about individuals who identify as gay or lesbian was through the regulation of civil unions and the provision of benefits and services in exchange for disclosure.”); Emens, *supra* note 49, at 898, 904–05 (“Interventions that create attitudinal benefits—by, for example, publicizing already existing third-party benefits—should typically be pursued. The EEOC’s policy on disclosure of accommodations should therefore be revised. The EEOC’s guidance interprets statutory privacy provisions very narrowly to imply that employers may never disclose to coworkers the disability-related reason for a workplace accommodation, even with the employee’s consent and support. This runs directly counter to the conclusion prompted by an understanding of third-party benefits: disclosure and publicity, if properly conducted with employee consent, could improve attitudes toward people with disabilities and the ADA by properly attributing any third-party usage benefits of accommodations to the statute and to the requesting employee.”); see also Eyer, *supra* note 97, at 583 (“[W]ider claiming of disability identity (especially among those with invisible disabilities) offers many more opportunities for the type of contact that has been identified as perhaps the most likely to disrupt prejudices: coming out. As social psychologists have theorized, ‘coming out’ may hold unique potential for stigma disruption, precisely because it ‘enable[s] positive contact before the stigma is revealed.’”).

125. See *supra* note 109 (quoting Adrienne Asch).

126. 18 U.S.C. § 249(a)(2) (2021) (originally titled The Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009).

127. See *id.*; see also *Hate Crimes: Laws and Policies*, DEP’T OF JUST., <https://www.justice.gov/hatecrimes/laws-and-policies> (last visited May 13, 2021); Ryken Grattet and Valerie Jenness, *Examining the Boundaries of Hate Crime Law: Disabilities and the Dilemma of Difference*, 91 J. CRIM. L. & CRIMINOLOGY 653, 679–80 (2001).

128. See 42 U.S.C. § 12102(1)(C) (2021).

although subsequent changes have chipped away at the original ADA's strong social-model definition.¹²⁹ Law and practices surrounding voting signal who is deemed a respected citizen and whose voice is valued.¹³⁰

- (5) *Litigation and Administrative Processes*. Scholars have shed light on the double-bind that the employment title of the ADA, in the years before the ADAAA, imposed on plaintiffs: having to prove they were very limited in order to “count” as disabled under the statute, and then having to prove that they were nonetheless “otherwise qualified” to do the job.¹³¹ Other work has identified specifically problematic legal actions, for their impact on plaintiffs, such as hedonic damages, which require plaintiffs to present evidence that their disability diminishes their happiness—playing in to the fallacious assumptions of the disability paradox¹³²—and “wrongful life” actions.¹³³ The administrative procedures that accompany disability determinations have been exposed for their burdens and identity-shaping elements.¹³⁴
- (6) *Government Legal Action and Prioritization*. Which cases the government chooses to pursue not only shapes legal outcomes but confers valuable recognition. When high profile government legal actors, like the Department of Justice (DOJ) or the Southern District of New York (SDNY), step up to file a lawsuit or settle a disability-based complaint, this signals the importance of this category of claims, area of law, and class of rights

129. See Emens, *supra* note 13, at 214–18.

130. See, e.g., Rabia Belt, *Contemporary Voting Rights Controversies Through the Lens of Disability*, 68 STAN. L. REV. 1491 (2016).

131. See, e.g., 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, 218 (2008) (describing this “catch-22 for disabled workers”).

132. Bagenstos & Schlanger, *supra* note 78, at 760 (explaining how “hedonic damages practice all but guarantees that a pessimistic view of disability will be translated into litigation practice, verdicts, and doctrine”).

133. See, e.g., Wendy F. Hensel, *The Disabling Impact of Wrongful Birth and Wrongful Life Actions*, 40 HARV. C.R.-C.L. L. REV. 141, 141–43 (2005).

134. See, e.g., Dorfman, *supra* note 13, at 1083; Harris, *supra* note 118, at 501; Elizabeth F. Emens, *Disability Admin: The Invisible Costs of Being Disabled*, 105 MINN. L. REV. 2239, 2341–54 (2021); Katie Savin, “Being on SSI Is a Full-Time Job:” How SSI and SSDI Beneficiaries Work Around and Within Labor Incentive Programs 12 (2019) (report, University of California, Berkeley), https://ardraw.policyresearchinc.org/wp-content/uploads/2019/07/Savin_ARDRAW-Report.pdf.

holders.¹³⁵ By contrast, the failure to respect the rights, health, and even lives of those in the care of the state—in prisons and other state institutions—reinforces stigmatizing attitudes, often implicating race as well as disability.¹³⁶

- (7) *Broader Legal Norms.* Laws and treaties that haven't been adopted in a particular jurisdiction can nonetheless inform legal and social understandings. The UN Convention on the Rights of Persons with Disabilities (CRPD) has been ratified by 182 countries, though not by the United States.¹³⁷ U.S. disability law informed the CRPD, but the CRPD also has the potential to inform thinking and advocacy in this country, even in the absence of formal recognition and legal process.¹³⁸

135. See, e.g., Press Release, U.S. Dep't of Just., Manhattan U.S. Attorney Announces Agreement with Related Companies to Increase Accessibility of the Vessel in Hudson Yards (Dec. 23, 2019), <https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-announces-agreement-related-companies-increase-accessibility>; see also *Olmstead v. L.C.* by Zimring, 527 U.S. 581, 587 (1999).

136. See, e.g., Morgan, *supra* note 112.

137. See *Convention on the Rights of Persons with Disabilities (CRPD)*, U.N. <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html> (last visited May 13, 2021).

138. See, e.g., ARLENE S. KANTER, *THE DEVELOPMENT OF DISABILITY RIGHTS UNDER INTERNATIONAL LAW: FROM CHARITY TO HUMAN RIGHTS* 107, 300–03 (2017); Michael Ashley Stein & Janet E. Lord, *Future Prospects for the United Nations Convention on the Rights of Persons with Disabilities*, in *THE UN CONVENTION ON THE RIGHTS OF THE PERSONS WITH DISABILITIES: EUROPEAN AND SCANDINAVIAN PERSPECTIVES* 17 (Gerard Quinn & Oddný Mjöll Arnardóttir eds., 2009); Arlene S. Kanter, *Do Human Rights Treaties Matter: The Case for the United Nations Convention on the Rights of People with Disabilities*, 52 *VAND. J. TRANSNAT'L L.* 577, 593–94 (2019) (“The CRPD . . . has the potential to challenge the very structure of how and for whose benefit societies are organized . . . conforming domestic laws and policies to the CRPD is not just about passing laws requiring buildings and transportation systems to be accessible. Rather, it is about making fundamental changes in how societies view people with disabilities so that they will be able to fully participate.”); Arlene S. Kanter, *Let's Try Again: Why the U.S. Should Ratify the United Nations Convention on the Rights of People with Disabilities*, 35 *TOURO L. REV.* 301, 302 (2019). On Article 12 in particular, see, for example, Kristin Booth Glen, *Changing Paradigms: Mental Capacity, Legal Capacity, Guardianship, and Beyond*, 44 *COLUM. HUM. RTS. L. REV.* 93, 160–62 (2012) (“Catching the wave of the emerging [CRPD] paradigm is disorienting . . . It will require not only changes in our laws, but also profound changes in how we see and understand people with intellectual disabilities.”); Jasmine E. Harris, *The Role of Support in Sexual Decision-Making for People with Intellectual and Developmental Disabilities*, 77 *OHIO ST. L.J.* 83, 91 (2016) (“The CRPD . . . is not just a legal document, but also a political document.”) (internal citation omitted); Robert Dinerstein, *Implementing Legal Capacity Under Article 12 of the UN Convention on the Rights of Persons with Disabilities: The Difficult Road from Guardianship to Supported Decision-Making*, 19 *HUM. RTS. BRIEF* 1, 8, 12 (2012) (“The responsibility for implementation of the CRPD is not limited to the actions of States Parties,” as Article 33 requires that “States Parties establish national implementation and monitoring mechanisms, with participation by civil society”).

- (8) *Social Welfare and Tax Law*. Social welfare and tax law define disability and establish disability's relation to dependency and to work.¹³⁹ These relations implicate definitional aspects of law¹⁴⁰ and complex policy debates,¹⁴¹ as well as practical determinations of whether disabled people have the supports necessary to go to work or participate meaningfully in community and civil life.¹⁴²

These are a subset of the ways law can help promote better attitudes to disability and disabled people.

B. Avenues to Change

I am not ready to abandon the quest for a society in which human beings are appreciated for abilities and talents, assisted based upon their needs, and where differences in skin color, gender, sexual orientation, and health status are not occasions for exclusionary or pejorative treatment.

— Adrienne Asch¹⁴³

This Section sketches some further avenues for changing attitudes to disability, ranging from conventional and familiar to innovative and perhaps even surprising.

- (1) *Contact*. Research supports the *contact hypothesis*, the theory elaborated by Gordon Allport that close proximity across difference can improve attitudes, under certain conditions.¹⁴⁴

139. See *Cleveland v. Policy Mgmt. Sys. Corp.*, 526 U.S. 795, 801 (1999) (first citing 42 U.S.C. § 423(a)(1); and then citing *id.* § 423(d)(1)(A)).

140. See, e.g., Sarah B. Lawsky, *Redefining Mental Disability in the Treasury Regulations*, TAX NOTES TODAY 559, 559 (2003); David Weisbach, *Toward a New Approach to Disability Law*, 2009 UNIV. CHI. LEGAL FORUM 47, 58 (2009).

141. See, e.g., BAGENSTOS, *supra* note 98, at 138–45.

142. See, e.g., Samuel R. Bagenstos, *The Future of Disability Law*, 114 YALE L.J. 1, 8 (2004).

143. See Asch, *supra* note 1, at 393.

144. See, e.g., MICHELLE R. NARIO-REDMOND, ABLEISM: THE CAUSES AND CONSEQUENCES OF DISABILITY PREJUDICE 274–76 (2019); Samuel R. Bagenstos, “Rational Discrimination,” *Accommodation, and the Politics of (Disability) Civil Rights*, 89 VA. L. REV. 825, 843–44 n.55 (2003); Elizabeth Levy Paluck, Seth A. Green & Donald P. Green, *The Contact Hypothesis Re-Evaluated*, 3 BEHAV. PUB. POL’Y 1, 2 (2018); Thomas F. Pettigrew & Linda R. Tropp, *A Meta-Analytic Test of Intergroup Contact Theory*, 90 J. PERSONALITY & SOC. PSYCHOL. 751, 767 (2006); Patrick W. Corrigan & David L. Penn, *Lessons from Social Psychology on Discrediting Psychiatric Stigma*, 54 AM. PSYCHOL. 765, 772–73 (1999); Petra C. Gronholm, Claire Henderson, Tanya Deb & Graham Thornicroft, *Interventions to Reduce Discrimination and Stigma: The State of the Art*, 52 SOC. PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY 249, 252 (2017) (“A systematic review of the overall effect of variety of interventions delivered to student groups identified 35 studies (involving 4257

When people of different identities work side by side, in collaborative rather than competitive endeavors, with support for integration from the entity's leadership and the surrounding context, contact can help reduce bias.¹⁴⁵ Much of the work on the contact hypothesis has focused on race, but some work supports its utility for bias against disabled people—though the reductions in disability bias due to contact are not as substantial as for some other identity categories and also vary by type of disability.¹⁴⁶ Far from fully succeeding in improving attitudes, contact's effects appear to be limited and may even backfire¹⁴⁷ or lead to complicated effects in some instances.¹⁴⁸

- (2) *Education*. Informing and shaping the perspectives of the public can take various forms—from school-based initiatives (including formal curricula and special programming¹⁴⁹) to workplace initiatives (such as debiasing trainings and the “architecture of inclusion”¹⁵⁰) to media (such as news, podcasts).¹⁵¹ Data are mixed on the effectiveness of debiasing

students) covering a range of interventions including contact with a person with mental health problems, and education via text, lecture, film or role play. Narrative synthesis indicated that live or video-based contact with people with mental health problems were the most effective interventions in improving attitudes and reducing desire for social distance.”) *See generally* GORDON W. ALLPORT, *THE NATURE OF PREJUDICE* (1954) (setting out inter-group contact theory).

145. As has been noted elsewhere, the conditions for contact to work have expanded, making “‘optimal’ contact . . . impossible.” Harris, *The Aesthetics of Disability*, *supra* note 73, at 911–12 (citing Thomas F. Pettigrew & Linda R. Tropp, *Allport's Intergroup Contact Hypothesis: Its History and Influence*, in *ON THE NATURE OF PREJUDICE: FIFTY YEARS AFTER ALLPORT* 271 (John F. Dovidio, Peter Glick & Laurie A. Rudman eds., 2005)).

146. *See id.* at 912–13.

147. *Id.* at 911–16; NARIO-REDMOND, *supra* note 144, at 276.

148. *See, e.g.*, Dorfman, *supra* note 13, at 1076 (reporting findings suggesting that more contact may even lead to more suspicion of the “disability con”).

149. *Cf. e.g.*, Yaron Covo, *Reversing “Reverse Mainstreaming”: The Meaning of Integration in Special Education Law* (Oct. 17, 2021) (unpublished manuscript) (on file with Syracuse Law Review) (recognizing the attitudinal benefits of integrating nondisabled students into special education classrooms while raising concerns about the effectiveness of the practice as applied).

150. *See, e.g.*, Susan Sturm, *The Architecture of Inclusion: Advancing Workplace Equity in Higher Education*, 29 *HARV. J.L. & GENDER* 247 (2006); Susan Sturm & Howard Gadlin, *Conflict Resolution and Systemic Change*, 2007 *J. DISPUTE RESOL.* 1 (2007).

151. One lovely recent example is this piece by Jasmine Harris: *‘The Hill We Climb’ to Overcome Stereotypes About Disabilities*, *supra* note 21; *see also, e.g.*, Sarah Clement et. al., *Mass Media Interventions for Reducing Mental Health-Related Stigma*, 12 *COCHRANE DATABASE SYSTEMATIC REVIEWS* 1, 2–3 (2011) (reporting on results that “indicate that mass media interventions may have a small to medium effect in decreasing prejudice, and are equivalent to reducing the level of prejudice from that associated with schizophrenia to that associated with major depression”).

programs¹⁵²—and particular initiatives, like disability simulation days, have been widely criticized¹⁵³—but some approaches show promising results.¹⁵⁴ Educational efforts that are broad, deep, and long—like the antiracism initiatives that some schools have been putting in place, to reach young people with developmentally appropriate lessons in history, facts, and artistic production throughout their years of schooling—presumably have more potential to change attitudes and stereotypes in a meaningful way.¹⁵⁵ Short-term and one-off interventions, particularly with adults, may be best oriented toward behavior rather than beliefs and attitudes—that is, toward helping individuals and organizations learn to slow down and make decisions based on information rather than instinct, and thus to help minimize the impact of bias in decision-making (implicit or otherwise).¹⁵⁶

- (3) *Role Models*. Some data suggest that attitudes and beliefs about groups that have been excluded, stereotyped, or stigmatized can

152. See, e.g., Calvin K. Lai et al., *Reducing Implicit Racial Preferences: II. Intervention Effectiveness Across Time*, 8 J. EXPERIMENTAL PSYCHOL. 1001, 1002 (2016).

153. See, e.g., Michelle R. Nario-Redmond, Dobromir Gospodinov & Angela Cobb, *Crip for a Day: The Unintended Negative Consequences of Disability Simulations*, 62 REHAB. PSYCHOL. 324, 329–30 (2017) (finding, in an empirical study, that disability simulations led subjects to “express more empathetic concern (warmth) toward people with disabilities than before” and “more pity and discomfort about meeting someone with a disability” and concluding that “a combination of disability simulations actually worsened attitudes about interacting with disabled people in the future”); JR Thorpe, *This Is How to Be a Better Ally to Disabled People – Without Disability Simulators*, BUSTLE (Aug. 23, 2017), <https://www.bustle.com/p/disability-simulators-dont-work-but-there-are-other-ways-to-be-able-bodied-ally-75727>.

154. See, e.g., Matthew J. Hirshberg, Lisa Flook, Robert D. Enright & Richard J. Davidson, *Durable Teacher Reductions in Implicit Race Bias: A Mindfulness and Loving-Kindness Intervention Results in Durable Preservice Teacher Reductions in Implicit Race Bias* 17 (May 2019) (unpublished manuscript, University of Wisconsin), <https://www.researchgate.net/publication/333095543> (finding that, after undergraduates were assigned a course of mindfulness-based teacher training, “[a]n average of 6-months post-intervention, preservice teachers assigned to a [mindfulness-based intervention] with no anti-bias content continued to evidence significantly reduced implicit race bias towards children compared to teacher education as usual controls”).

155. See, e.g., Rachel D. Godsil, Linda R. Tropp, Phillip Atiba Goff & John A. Powell, *The Science Of Equality, Volume 1: Addressing Implicit Bias, Racial Anxiety, and Stereotype Threat in Education and Health Care*, PERCEPTION INST. 1, 47–51 (2014) (discussing multifaceted interventions to reduce bias); Nicole Belolan, *Over-the-Hill Canes and Ideal Bodies: Teaching Disability History as Public History*, NAT’L COUNCIL ON PUB. HISTORY (Feb. 7, 2018), <https://ncph.org/history-at-work/teaching-disability-history-as-public-history/>.

156. Cf., e.g., Godsil, Tropp, Goff & Powell, *supra* note 155, at 47–48 (discussing interventions to prevent biased decision-making). I thank Monica Bell for insight on this point.

be shifted through salient “counter-stereotypes.”¹⁵⁷ Especially around disability, role models may be significant, where ableist attitudes presume lack of ability through the *spread effect* (that is, outsiders’ assuming one impairment means another impairment) or through a kind of synecdoche (that is, outsiders’ assuming that some impairment means a total inability).¹⁵⁸ Studies also find, however, that onlookers can discount prominent counter-stereotypical figures as exceptional cases.¹⁵⁹

- (4) *Protests and Other Salient Activism.* Disability activism takes myriad forms.¹⁶⁰ The Capitol Crawl and the 504 Sit-In are iconic disability-rights protests, which had apparent effects, political and legal.¹⁶¹ Disability rights protests have the potential to change attitudes and beliefs in multiple ways, including by

157. See, e.g., Nilanjana Dasgupta & Anthony G. Greenwald, *On the Malleability of Automatic Attitudes: Combating Automatic Prejudice with Images of Admired and Disliked Individuals*, 81 J. PERSONALITY & SOC. PSYCHOL. 800, 806 (2001) (“Two experiments demonstrated that implicit evaluations of historically stigmatized groups such as African Americans and older people may be modified, at least temporarily, by repeatedly reminding people of admired members of those groups and of disliked members of high-status reference groups.”); Godsil, Tropp, Goff & Powell, *supra* note 155, at 45–46 (citing sources); see also, e.g., Covo, *supra* note 123, at 285.

158. See, e.g., Bagenstos, *supra* note 14, at 423–24. This may help explain the significance of disability icons in sports, for instance, which run so counter to outsiders’ views of disability. Cf. Michael A. Rembis, *Athlete First: A Note on Passing, Disability, and Sport*, in DISABILITY AND PASSING: BLURRING THE LINES OF IDENTITY 111–13 (Jeffrey A. Brune & Daniel J. Wilson eds., 2013); see also Covo, *supra* note 123, at 285.

159. See, e.g., Dasgupta & Greenwald, *supra* note 157, at 808 (“In such a situation, new cognitive categories (subtypes) are created to accommodate counterstereotypic individuals without changing the original stereotype.”); Herbert Bless, Norbert Schwarz, Galen V. Bodenhausen & Lutz Thiel, *Personalized Versus Generalized Benefits of Stereotype Disconfirmation: Trade-offs in the Evaluation of Atypical Exemplars and Their Social Groups*, 37 J. EXPERIMENTAL SOC. PSYCHOL. 386, 387–88 (2001) (“[A] highly favorable exemplar that is excluded from the representation formed of a group may be used in constructing a standard of comparison, resulting in less favorable judgments of the group.”); Ziva Kunda & Kathryn C. Oleson, *Maintaining Stereotypes in the Face of Disconfirmation: Constructing Grounds for Subtyping Deviants*, 68 J. PERSONALITY & SOC. PSYCHOL. 565, 565 (1995) (“Rather, when people encounter group members who violate a group stereotype—a wealthy African-American or an aggressive housewife—they ‘fence off’ these members by assuming that they constitute a distinct subtype of the group.”).

160. Eyer, *supra* note 97, at 574–76 (discussing online communities and hashtags important to asserting disability identity); Rabia Belt & Doron Dorfman, *Disability, Law, and the Humanities*, in OXFORD HANDBOOK OF LAW AND HUMANITIES 1, 11 (Simon Stern, Maksymilian Del Mar & Bernadette Meyler eds., 2019) (“Photos and videos of protesters being pulled from wheelchairs and arrested have surfaced on social media as well as news outlets; it seemed like the golden days of mobilization of disability rights are back.”). See generally Emens, *supra* note 22 (discussing protest art related to inaccessibility).

161. See, e.g., Harris, *The Aesthetics of Disability*, *supra* note 73, at 947; see also Harris, *supra* note 21, at 47.

making trivializing by outsiders more difficult; by pressing outsiders to look more carefully at a situation or its history or other media and education sources; and by increasing media representation of particular disabled individuals and organizations.¹⁶² Especially around disability, protests may also lead to stereotype disruption, as disabled people demonstrate their commitment and ability to take bold collective action.¹⁶³

- (5) *Literature, Films, Comedy, and Other Arts.* The arts may lead to better attitudes and beliefs in multiple ways, for instance, by creating the conditions for empathy (actually feeling what someone else feels) rather than pity (feeling sorry for someone from on high);¹⁶⁴ by humanizing an “other” who has been stigmatized;¹⁶⁵ by telling (factual) history in a form that reaches

162. Cf., e.g., Soumyajit Mazumder, *The Persistent Effect of U.S. Civil Rights Protests on Political Attitudes*, 62 AM. J. POLIT. SCI. 922, 923 (2018) (“Using cross-sectional, historical data on U.S. civil rights protests during 1960–65 combined with contemporary public opinion data, I find that whites from counties that experienced civil rights protests tend to be more liberal today, especially with respect to racial attitudes. They indicate greater support for affirmative action, display less racial resentment, and are more likely to identify as Democrats than whites from counties that did not experience protests. These results hold after accounting for a variety of different alternative explanations and state fixed effects.”); Virginia Parks & Dorian Warren, *The Politics and Practice of Economic Justice: Community Benefits Agreements as Tactic of the New Accountable Development Movement*, 17 J. CMTY. PRAC. 88, 99–100 (2009) (discussing the power of protests, inter alia); Dorian T. Warren, *Wal-Mart Surrounded: Community Alliances and Labor Politics in Chicago*, 14 NEW LAB. F. 16, 17 (2005) (discussing “the need to focus on the local level, and the ways in which labor can successfully wield its geographic political power in long-term comprehensive organizing campaigns”).

163. See *supra* text accompanying note 123 (discussing stereotype disruption).

164. See, e.g., Jordan Potash & Rainbow T.H. Ho, *Drawing Involves Caring: Fostering Relationship Building Through Art Therapy for Social Change*, 28 ART THERAPY: J. AM. ART THERAPY ASS’N 74, 74 (2011) (“In this qualitative study, 46 people participated in a guided viewing experience of artworks by individuals who were living with mental illnesses. After providing data on their familiarity with mental illnesses, their attitudes, and their level of empathy, viewers created an art image in response to an exhibiting artist and participated in a discussion. Results indicated that the facilitated experience helped to foster empathy, allowed viewers to relate to the exhibiting artists, and promoted attitudinal change.”); see generally Martha Nussbaum, *Narratives of Hierarchy: Loving v. Virginia and the Literary Imagination*, 17 QUINNIPIAC L. REV. 337 (1997) (discussing the role of literature in supporting empathy).

165. See, e.g., Nussbaum, *supra* note 164; Patrick W. Corrigan, Karina J. Powell, J. Konadu Fokuo, and Kristin A. Kosyluk, *Does Humor Influence the Stigma of Mental Illnesses?*, 202 J. NERVOUS & MENTAL DISEASE 397, 399 (2014) (finding effects of disclosure with humor among participants who “enjoy humor and making people laugh,” though no overall effect); see also Joshua Sealy-Harrington, *Untelling the Story of Race*, WALRUS (July 15, 2020), <https://thewalrus.ca/untelling-the-story-of-race/>. But cf. Norman Jones, Maya Twardzicki, John Ryan, Theresa Jackson, Mohammed Fertout, Claire Henderson & Neil Greenberg, *Modifying Attitudes to Mental Health Using Comedy as a Delivery Medium*, 49 J. SOC. PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY 1667, 1667 (2014) (“Post-show,

broader readers through style, genre, or compelling narration or visual depictions.¹⁶⁶ Sometimes art is itself a protest, thereby doing the political work discussed above more directly.¹⁶⁷ Other times, popular forms of media may spotlight potential role models, contribute to public education, or provide a kind of intimacy that approximates contact,¹⁶⁸ overlapping with mechanisms discussed above. Of course literature, film, and other arts are shaping attitudes and perceptions all the time, often not toward better attitudes¹⁶⁹—which is one reason why the work that consciously or directly illuminates the inside view of disability is so vital.

- (6) *Relationships*. The potential of attitudinal change through relationships may be grouped under two rubrics. First, groups organized around disability experience, rights, or debiasing may directly aim to improve attitudes through collective

intervention group (IG) participants reported significantly less stigmatisation and accurately answered mental health-related questions; in the small numbers followed up, neither difference was maintained . . .”).

166. See generally HABEN GIRMA, *HABEN: THE DEAFBLIND WOMAN WHO CONQUERED HARVARD LAW* (2019) (memoir of Haben Girma, the first Deafblind graduate of Harvard Law School); LINTON, *supra* note 71 (memoir of Linton’s gradual political awakening); ALICE WONG, *DISABILITY VISIBILITY: FIRST-PERSON STORIES FROM THE TWENTY-FIRST CENTURY* (2020) (collection of contemporary essays written by disabled people); CRIP CAMP: A DISABILITY REVOLUTION (Higher Grounds Production 2020); cf. MAYA ANGELOU, *I KNOW WHY THE CAGED BIRD SINGS* (1969).

167. See, e.g., Park McArthur, *Ramps* (2014); Shannon Finnegan, *Anti-Stairs Club Lounge at “Vessel”*, SHANNON FINNEGAN, <https://shannonfinnegan.com/anti-stairs-club-lounge-at-the-vessel> (last visited May 13, 2021); see also Emens, *supra* note 22, at 1362–63, 1367–70.

168. See, e.g., Beth Haller, *A Wish for Authentic Disability Representation on Television to Continue*, CHAPMAN UNIV. (July 14, 2017), <https://blogs.chapman.edu/tpi/2017/07/14/a-wish-for-authentic-disability-representation-on-television-to-continue/>; Kristen Lopez, *‘Deaf U’ Review: Netflix’s Reality Show Is Relatable and Compelling*, INDIEWIRE (Oct. 9, 2020, 6:00 PM), <https://www.indiewire.com/2020/10/deaf-u-review-netflix-1234590049/>; Lawrence Carter-Long, *How ABC’s ‘Speechless’ Is Changing Attitudes About Disability*, UPWORTHY (Oct. 3, 2016), <https://www.upworthy.com/how-abcs-speechless-is-changing-attitudes-about-disability> (“By the end of their screening, Hydal says she witnessed budding non-disabled allies engaging with disability stories told by disabled people, and it felt like an important and rare occurrence.”).

169. On this, see the rich literature in disability studies critiquing popular artistic representations of disability now and historically. See, e.g., JOE SHAPIRO, *NO PITY: PEOPLE WITH DISABILITIES FORGING A NEW CIVIL RIGHTS MOVEMENT* 12–14 (1993); ARTHUR SHAPIRO, *EVERYBODY BELONGS: CHANGING NEGATIVE ATTITUDES TOWARD CLASSMATES WITH DISABILITIES* 11 (Joe Kincheloe & Shirley R. Steinberg eds., 1999) (summarizing mocking depictions of disabled people in movies and ads); see also Emens, *supra* note 28, at 1398 (discussing the effect of an inside versus an outside view on the viewer of a film like *Million Dollar Baby*).

consciousness-raising, education, or collaboration.¹⁷⁰ Second, intimate, familial, and other close relationships across disability (between disabled and nondisabled partners, for instance, or between individuals with different disabilities) may lead to heightened experiences of empathy or direct experience of inaccessibility—for instance, because someone who travels closely with a companion who has a particular disability is also excluded by environments that exclude their traveling companion, as noted earlier.¹⁷¹ It is important to recognize, however, that close relationships can also sometimes lead to conflicts or other difficulties that work against better attitudes—or more broadly against the interests of individual disabled people.¹⁷²

- (7) *Individual Inquiry and Reflective Practice*. Various forms of reflective practice might have a role to play in improving attitudes to disability and disabled people. Perhaps most surprisingly, recent work suggests that mindfulness and other forms of meditation may help reduce bias along various axes of discrimination—and disability bias is one promising

170. Here, one might think of camps, clubs, political organizations, and other entities, formal and informal, with disability at their center. This would also include informal groups that might organize around debiasing their attitudes with regard to disability, akin to the antiracist reading and discussion groups that White people sometimes form to try to combat structural racism by confronting its internal manifestations. Such groups are mocked in articles like this one, Tre Johnson, *When Black People Are in Pain, White People Just Join Book Clubs*, WASH. POST (June 11, 2020, 6:10 PM), https://www.washingtonpost.com/outlook/white-antiracist-allyship-book-clubs/2020/06/11/9edcc766-abf5-11ea-94d2-d7bc43b26bf9_story.html, and must be handled carefully, but parallel efforts by nondisabled folks would probably be a welcome change from how often disability rights and ableism are overlooked by mainstream ableist society. Note that I capitalize White and Black for reasons described potently by Eve Ewing. See Eve L. Ewing, *I'm a Black Scholar Who Studies Race. Here's Why I Capitalize 'White'*, ZORA (July 2, 2020), <https://zora.medium.com/im-a-black-scholar-who-studies-race-here-s-why-i-capitalize-white-f94883aa2dd3>; see also Eyer, *supra* note 97, at 555.

171. On the former, research suggests friendship may be a particularly promising form of “contact,” see, e.g., Godsil, Tropp, Goff & Powell, *supra* note 155, at 49 (citing sources); *supra* notes 144–48 and accompanying text. For more discussion of the latter, see, for example, Emens, *supra* note 70, at 1392–93.

172. Think here of National Alliance on Mental Illness (NAMI), for instance, or other organizations that represent the interests of family members of people with “mental illness”; or of parents who oppose the sexual development or other autonomy interests of their (adult) children with disabilities. Cf., e.g., BAGENSTOS, *supra* note 98, at 3–4 (discussing conflicts around paternalism and autonomy in the disability rights movement).

application, as I am exploring elsewhere.¹⁷³ In addition, debiasing literature in other fields has proposed that the reflective practice of expressive writing can help improve attitudes.¹⁷⁴ Awareness of bias and self-inquiry may also help interrupt forms of discriminatory behavior—whether or not they affect the attitudes and beliefs that underlie that behavior.¹⁷⁵

This list, though far from exhaustive, offers some pathways to changing attitudes. The next Part circles back to the question of what constitutes attitudes and which attitudes matter, in order to pose questions for the future.

IV. REFINING ATTITUDES & IDENTIFYING QUESTIONS

In 1987, Adrienne Asch published a short essay entitled, What's Missing (or What I Haven't Found Yet). The essay sketched an agenda for future research in disability studies by cataloguing the questions she wished had been answered and the research she wished had been conducted thus far in the field. . . . I will . . . follow Adrienne's inspiring example of asking hard questions. This tribute to Adrienne will attempt to identify some of the burning questions [related to disability] that she was struggling to answer, or find answers to, in recent years.

— *What's Left in Her Wake: In Honor of Adrienne Asch*¹⁷⁶

In the wake of Adrienne's death, I gathered some of the questions that arose from Adrienne's published work and from our conversations, public and private, and published them:

- *What makes mainstream attitudes to disability so limiting, so confining, and so out of touch with the experience of so many people with disabilities? . . .*
- *Why do some nondisabled people seem to "get it" with regard to disability? And what does it mean to get it? . . .*
- *Is impairment, such as blindness, a neutral trait? . . .*
- *How can the disability rights movement better understand, benefit, and collaborate with the average person with a disability who does not identify as disabled? And how can*

173. On applications of mindfulness meditation to disability discrimination, in particular, see Elizabeth F. Emens, *Enabling Mindfulness: Debiasing Disability Discrimination Through Meditation*, U. CONN. L. REV. (forthcoming 2022).

174. See, e.g., LAYLA F. SAAD, *ME AND WHITE SUPREMACY: COMBAT RACISM, CHANGE THE WORLD, AND BECOME A GOOD ANCESTOR* 3–6 (2020).

175. See, e.g., Godsil, Tropp, Goff & Powell, *supra* note 155, at 47–48; Emens, *supra* note 70, at 1309–10; Robinson, *supra* note 108, at 2788–90.

176. Emens, *supra* note 29, at 19.

disability rights come to be understood as a movement on behalf of the many rather than the few? . . .

- *What are the possibilities, and the limits, for law in addressing the problems that face people with disabilities today? And what can be done about the problems that law cannot reach directly, particularly in the social and intimate spheres of life? . . .*
- *What aspects of disability experience are inherent in impairment, and what aspects are not? What parts of disability experience are modifiable, and what parts are not?*¹⁷⁷

These questions remain pressing and have informed this essay.

But these questions and my framing of the essay thus far have avoided another important line of questioning about attitudes, which Adrienne foreshadowed with a different question. That question, which I mentioned only in passing in that earlier tribute, is one that the scholar Jasmine Harris has made bold strides toward answering—and even deepening—in the intervening years: “Why . . . does ‘contact’ with disability seem to change the minds of some people but not others?”¹⁷⁸

Harris has importantly critiqued disability law scholarship, including my own, for conflating *cognitive* benefits of contact—principally, that is, the unseating of stereotypical beliefs—with the *affective and aesthetic* shifts that must occur for genuine acceptance and inclusion of disabled people and that are much more difficult to achieve.¹⁷⁹ She has rightly observed that the law and the scholarship in this area has, for the most part, assumed that the attitudinal (feelings-based) shift would follow from the (cognitive) debiasing of stereotypes.¹⁸⁰ This is a vital insight that should shape our thinking about the future of the ADA.

Thus far in the essay, I have used the term attitudes (which social psychologists generally use for feelings-based bias) to encompass stereotypes (belief-based bias) as well as attitudes, as I acknowledged earlier.¹⁸¹ My willingness to conflate the two, and emphasize beliefs and ideas over feelings, directly reflects the orientation Harris has critiqued in her work identifying the importance of the aesthetic dimension to disability bias.¹⁸²

177. *Id.* at 19–21.

178. *Id.* at 19.

179. Harris, *The Aesthetics of Disability*, *supra* note 73, at 929–30.

180. *See id.*

181. *See supra* text accompanying note 34.

182. *Cf.* Emens, *supra* note 29, at 20 (discussing Adrienne’s preference for the term “comfortable” or “accurate” attitudes rather than “positive attitudes”).

The psychologists' distinction between stereotypes and attitudes may give us useful terminology for teasing out the cognitive and the affective dimensions of bias, and yet, I believe Harris is identifying a deeper tension. Attitudes for social psychologists are often attitudes toward the category of a particular identity (e.g., "persons with disabilities") rather than a feeling state toward a particular individual or a feeling about being close to a particular individual.¹⁸³ When Harris argues that the integration presumption in disability law underestimates the aesthetic underpinnings of some disability bias, Harris is urging a more embodied sense of attitudes than is commonly considered under the name "attitudes."

This intervention adds further questions to the mix, starting with this central inquiry: *By what mechanisms do negative aesthetic attitudes to disability improve, where they do so?* Of the mechanisms for changing attitudes identified in Part III, most are oriented toward beliefs more than toward affective or aesthetic attitudes of the sort Harris is addressing. For instance, contact, integration law and policy, and framing rules all focus more on changing beliefs, as Harris has discussed.¹⁸⁴ Educating the public also centers on changing ideas, historical accounts, and stereotypes. Perhaps role models or relationships have the capacity to change affective attitudes or aesthetic sense—to reshape what is beautiful or sexy¹⁸⁵—but one might also ask how much the formation of relationships or role models depends, in part, on pre-existing aesthetic preferences.¹⁸⁶ The individual self-inquiry discussed earlier is cognitive in nature.¹⁸⁷ Mindfulness interventions work on emotional and existential levels, as well as the cognitive and behavioral, so perhaps these hold some promise¹⁸⁸—and, as Congressman Tim Ryan has observed, such

183. See *supra* note 32.

184. Harris, *The Aesthetics of Disability*, *supra* note 73, at 925, 971; *supra* Part III.

185. Cf., e.g., Emens, *supra* note 70, at 1378 (discussing the film *Murderball*).

186. See Harris, *The Aesthetics of Disability*, *supra* note 73, at 935–37.

187. See Emens, *Intimate Discrimination*, *supra* note 70, at 1363–66 (discussing an individual ethical self-inquiry with regard to intimate preferences); see also *supra* note 175 (noting this among possible mechanisms for changing attitudes).

188. For further discussion, see Emens, *supra* note 173; Joan Tollifson, *Imperfection Is a Beautiful Thing: On Disability and Meditation*, in *STARING BACK: THE DISABILITY EXPERIENCE FROM THE INSIDE OUT* 105–12 (Kenny Fries ed., 1997); Angela P. Harris, *Toward Lawyering as Peacemaking: A Seminar on Mindfulness, Morality, and Professional Identity*, 19 RICH. J.L. & PUB. INT. 377 (2016); Matthew J. Hirshberg, Lisa Flook, Robert D. Enright & Richard J. Davidson, *Integrating Mindfulness and Connection Practices into Preservice Teacher Education Results in Durable Automatic Race Bias Reductions*, UNIV. WIS. MADISON 1 (2019); RHONDA MAGEE, *THE INNER WORK OF RACIAL JUSTICE* (2019).

interventions are relatively inexpensive.¹⁸⁹ A similar point may be made about some forms of artistic production.¹⁹⁰

Other questions about possible mechanisms and legal interventions include these:

- Does a “critical mass” of people with disabilities in a community help ameliorate the effects of negative aesthetic attitudes¹⁹¹—either by altering the attitudes; by shifting the behavioral norms that constrain the behavior that might follow from the attitudes; or by creating opportunities for sub-communities of disabled people who collectively resist or ignore the negative attitudes? And if so, what constitutes a critical mass for these purposes (for instance, in terms of how many and whether the disabilities or aesthetic markers are the same or different)?
- Relatedly, does so-called inverse integration—where nondisabled people enter disabled spaces or activities—offer any more promising avenues for attitudinal change, aesthetic or otherwise, or present new problems that outweigh the potential benefits¹⁹²; or does slowing down rather than speeding up integration make a difference?¹⁹³
- Are there selection procedures in the employment context that could eliminate or discourage behavior based on negative aesthetic attitudes in the absence of explicit remarks—for instance, “designing a hiring process that involves a series of initial screening interviews that mask the appearance of the candidate (conducting interviews over the phone, for example)”?¹⁹⁴ And could such procedures backfire in any way by adding to stigma if they were differentially applied?
- Are some people’s negative aesthetic attitudes intractable or so difficult to change that change isn’t worth contemplating, and if so, in those contexts, what ameliorative approach is best?¹⁹⁵

189. See TIM RYAN, *A MINDFUL NATION* 34–35 (2012).

190. See *supra* notes 164–69 and accompanying text (citing sources).

191. Harris, *The Aesthetics of Disability*, *supra* note 73, at 969–70.

192. Covo, *supra* note 149 (examining this form of integration in the education context and raising concerns about this practice, as applied).

193. See Harris, *The Aesthetics of Disability*, *supra* note 73, at 910, 971 (seeming to suggest this).

194. *Id.* at 970.

195. For some ideas on behavior-focused interventions, see, for example, Godsil, Tropp, Goff & Powell, *supra* note 155, at 47–48.

These and related questions are important and must be faced. But another, possibly deeper, question has not, to my knowledge, surfaced before in disability law scholarship. These discussions have focused on *negative* aesthetic attitudes and what to do about them. This leaves one broad question: What does “getting it” look like from an affective or aesthetic perspective, rather than a cognitive one? What would the inside view look like if it were to encompass the aesthetic dimension?

Perhaps Harris or another scholar has an answer or is working on one.¹⁹⁶ For my part, I leave this question for another day.

CONCLUSION

For some, there is no glorious normal life to want back, not exactly. Opening, not reopening, is the aspiration. And so an urgent question should be how many people will be left out of renewed social circles—as millions were, for countless years, before anyone ever heard of COVID-19. That might raise questions for you, then. Questions like whether you will let outsiders in, if they want in. Whether you will find value in the extraordinary and the strange as you rebuild normal life. Whether you will remember how isolating life in lockdown could be for anyone. Whether you will be open. Whether you can be.

— Adam Samaha¹⁹⁷

This inquiry into the interplay between attitudes and law is launched by the thirtieth anniversary of the ADA and also, as noted at the outset, by the seventh anniversary of the death of interdisciplinary scholar Adrienne Asch.¹⁹⁸ Adrienne’s intention to write a book about nondisabled people who “get it” with regard to disability¹⁹⁹ inspired this search for the meaning of getting it; the legal, societal, and individual mechanisms for spurring people to get it; and the overlooked affective and aesthetic dimensions of getting it.

As others have noted, “nondisabled” may be better cast as “not yet disabled,” since anyone could become disabled at any time and will likely become so, if fortunate enough to live that long.²⁰⁰ Moreover, those who

196. Indeed, Harris may have a forthcoming article on this subject soon.

197. Adam M. Samaha, *Opening and Reopening: Dealing with Disability in the Post-Pandemic World*, SLATE, July 6, 2021, <https://slate.com/technology/2021/07/pandemic-disability-reopening-essay.html>.

198. See *supra* text accompanying note 3.

199. See Emens, *supra* note 29, at 19.

200. See, e.g., Arlene S. 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, 449, 449–50 (2011) (“[I]t may be said that we are all ‘temporarily-able-bodied’ or ‘T.A.B.’ because sooner

are already disabled don't yet have every disability, so they overlap with the *not yet disabled* in at least some respect. Thus, a project focused on improving attitudes of nondisabled people, in order to improve the law in action for disabled people, is a social insurance project for everyone, in our capacity as both outsiders and insiders to disability.²⁰¹ This vital insight can serve as a final (for now) revision to the list of inside insights that constitutes the Appendix to this piece.²⁰²

Attitudes to disability and disabled people will shape the next three decades under the ADA as much as they have shaped the first three decades. We must learn how to cultivate better attitudes, lest outside attitudes continue to block the statute's bold promise of inclusion, in pandemic times and the better times we hope lie ahead.

or later most of us will be disabled at some point in our lives; whether it comes sooner or later varies depending upon one's circumstances."); Michelle A. Travis, *Lashing Back at the ADA Backlash: How the Americans with Disabilities Act Benefits Americans Without Disabilities*, 76 TENN. L. REV. 311, 332 (2009) (observing that "'Us' and 'Them' Are Really 'We'"); Eyer, *supra* note 97, at 585 ("Thus, many if not most individuals will at some juncture fall within the ADA's expansive definition of disability. If even some fraction of those individuals perceived their own self-interest in disability rights—and acted accordingly as movement participants in politics, or even in everyday life—many of the disability rights movements' objectives would become immeasurably more likely."); *see also* NARIO-REDMOND, *supra* note 144, at 341 (discussing the "open enrollment" aspect of disability and framing disability bias as "a response to unwanted fears of death, the meaninglessness of life (social death), and the body's vulnerability to damage and decline" because disabled people "serve as unwanted reminders of the indefinite frailties of life, and our vulnerability to decline, dismemberment, and deterioration"); Emens, *supra* note 22, at 1391.

201. *See, e.g.*, Travis, *supra* note 200, at 332, 332–34 ("The first reason that nondisabled employees should feel a stake in the ADA's future is the fact that they themselves may fall within the ADA's protected class and face discrimination at any point during their working lives.").

202. The first item in the list should therefore be modified to include this point. The item currently reads as follows: "Disability happens to many people, indeed, most people, if they are lucky enough to live that long. (Age and disability potentially create interest convergence; accessibility is a form of social insurance for everyone.)" At the end, it should now include the sentence, "Thus, the term 'nondisabled' may be interpreted to mean 'not yet disabled.'" *See infra* Appendix.

APPENDIX: REVISED LIST OF INSIDE INSIGHTS

This is the list from *Framing Disability*, with citations omitted, adapted in the ways described above. The items have been renumbered into a series of fifteen consecutive points, with the original numbering in brackets.

(1) [1] Disability happens to many people, indeed, most people, if they are lucky enough to live that long. (Age and disability potentially create interest convergence; accessibility is a form of social insurance for everyone.) Thus, the term “nondisabled” may be interpreted to mean “not yet disabled.”

(2) [2] The fact that disability could happen to anyone does not, however, mean that nondisabled people will relate to disabled people, or disability rights, with empathy; it may instead lead to “existential anxiety” and a resistance to thinking about disability or people with disabilities.

(3) [3] Disability need not be as frightening as it sounds to many outsiders. Quality of life with a physical disability, even a substantially limiting one, is typically much better than nondisabled people predict it would be. For example, after an initial adjustment period, people who become paraplegic tend to return to something near to their pre-disability state of happiness. And while there is much variability across families, some work suggests that in the aggregate families with children with physical and intellectual disabilities exhibit patterns of overall well-being and adjustment similar to families without children with disabilities.

(4) [3.5] Psychosocial disabilities and invisible disabilities (like chronic pain) should not be as mysterious as they sound to some outsiders. Disbelief in the reality or depth of a person’s pain or suffering typically characterizes outsiders’ views of these disabilities. A more realistic view would recognize the real pain and suffering while not reducing an individual’s experience to that pain and suffering (which also means being open to any positive dimensions). This leads to the next point.

(5) [4] Life with a disability is a life in which disability is one, often small, piece. When imagining disability, nondisabled people often focus so much on the disability that they do not appreciate the ways that adaptation makes disability a part of life like anything else. (And even where disability is a big piece of a life, the disability is not the whole of the individual or the life.)

(6) [4.5] Common stereotypes and paternalistic attitudes toward disability are so pervasive and accepted that, when nondisabled people

who haven't been exposed to the inside view try to project positive attitudes to disability, they sometimes "get it" even less.

(7) [5] Life with a disability can be active and athletic. For example, people with disabilities can and do participate in competitive and recreational sports, both in standard sports settings and in disability-specific sports and competitions.

(8) [5.5] Dating, sex, and marriage are vibrant parts of many disabled people's lives, in contrast to the typical norm of desexualization, the discriminatory attitudes (including "aesthetic anxiety" and narrow ideals of beauty and sex), and the limited sexual options (including in "dating markets" and in institutional settings) often imposed by the outside view.

(9) [6] Accessibility has begun to make disability more livable and much less isolating than it once was (for instance, in periods of widespread institutionalization). Together with developments in health care and physical therapy, these changes have increased not just quality of life but life expectancy for some disabilities, such as Down syndrome.

(10) [7] Much of what makes disability disabling is the way that the environment is structured. Think, for example, about the ways that opportunities are limited for nondisabled people who go places with a disabled person; for those (nondisabled) people, accessibility determines what restaurants, theaters, or homes they can enter, although no medical condition limits them.

(11) [7.5] Disability occupies one axis of identity and its impact on a life varies widely, especially based on other intersecting axes of identity, including race, gender, sexual orientation, and socioeconomic status, as well as additional disabilities. Recognizing the ways the experience of disabilities and disability discrimination varies by intersectional aspects of identity is important in its own right. Thinking about disability in relation to other axes of identity—and across different types of disabilities that may coexist in an individual—is also important because this critical lens can help illuminate overlapping forms of subordination and inform a *disability justice* perspective. The value of thinking *across* axes of identity (or different disabilities) does not undercut the value, however, of sometimes thinking *within* the silo of disability alone (or of a specific disability). Thinking across axes of identity and thinking within axes of identity both have value.

(12) [8] Changing the environment to accommodate disability may not be granting "special rights," but may just involve broadening the kinds of accommodations provided in order to include those people neglected by typical design principles.

(13) [9] Adaptations and accommodations for disability can benefit more than just the disabled person who needs them. These innovations can benefit other disabled people, as well as nondisabled people.

(14) [10] Disability is frequently associated with costs and limitations, on the outside view. But the inside view appreciates the benefits and opportunities disability can provide—for instance, as a source of community and solidarity; as a bridge to individual identity development and meaning-making; and as a site of creativity and artistic production. The realist inside view does not ignore actual hardships and suffering that can accompany disability or impairment (often due to context or discrimination, per #10 [7]), but it also perceives the benefits and opportunities.

(15) [11] The inside view of disability is multi-vocal—full of complexity, like humanity itself.