

## **Go to the Margins of the Class**

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### ***Disability and Hate Crimes***

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With great ceremony, the press reported the February 1999 conviction of white supremacist John William King for the kidnapping and murder of James Byrd, Jr., who had been chained to a truck in Jasper, Texas, dragged two miles, and dismembered. Likewise, the conviction of coconspirator Lawrence Russell Brewer in September 1999 seemed to imply that justice had been done. If justice in a broader sense is to be served, however, another

fact of the case deserves attention. Byrd was not only black and the victim of race hatred; he was also disabled. The press has noted this so casually that few people realize it; those who do, including myself, found out that Byrd was severely arthritic and subject to seizures. This information was ferreted out only after extensive searches of news reports.

Indeed, I myself was uncertain that Byrd was a person with disabilities. I recalled reading, on the day the crime was first reported, that a disabled African American had been brutally murdered. Since I was interested in disability, the article caught my eye. Yet when the story reappeared days, weeks, and months later, Byrd was simply referred to as African American. Almost all the news stories contained this simplification. Indeed, when I decided to write a piece on the subject for *The Nation*, I at first thought I might have made an error in thinking that Byrd was a person with disabilities. When I went to the library to look up the articles on microfilm, I found that the *New York Times* mentioned only twice, in the first two reports, that Byrd was a person with disabilities. Any newspaper story I checked tended to follow that pattern.

Initially, I wanted to write this story as an op-ed piece for the *New York Times*. An acquaintance who is on the editorial board of the paper read my initial article and responded in a somewhat condescending and negative way. He asked me if I seriously thought that race could be equated with disability, whether the history of lynching and slavery could be meaningfully equated with occasional violence against people with disabilities. The editors for both these progressive journals saw race as the primary category and disability as a poor third cousin of race. Their assumption was that violence toward a person of color with disabilities is primarily the result of the color and much less the result of the disability.

But disability is hardly a minor category. Approximately 16 percent of Americans have a disability and, as such, they comprise a significant minority group with an inordinately high rate of abuse. According to the Center for Women's Policy Studies, disabled women are raped and abused at a rate more than twice that of nondisabled women. The risk of physical assault, robbery, and rape, according to researcher Dick Sobsey, is at least four times as great for adults with disabilities as for the general population. In February 1999, for example, a mentally retarded man in Keansburg, New Jersey, was abducted by a group of young people who tortured, humiliated, and assaulted him. In March 1999, advocates for another mentally retarded man filed a lawsuit against a group of Nassau County, New York, police officers who beat him while he was in custody.

People with disabilities and deaf people report that they are routinely harassed verbally, physically, and sexually in public places. In private institutions or group homes, they are often the prime victims of violence and sexual abuse; in their own homes, they are subjected to sexual abuse, domestic violence, and incest, preyed upon by family members, family "friends," and "caretakers." So the question remains, why is American society largely unaware of or indifferent to the plight of people with disabilities? Is it because as an ableist society, we do not really believe that disability constitutes a serious category of oppression? Whenever race and disability come together, as in the King case, ethnicity tends to be considered so much the "stronger" category that disability disappears altogether.

As a society, we have long been confronted by the existence of discrimination against people of color. Students pour over the subject of race in their textbooks and read the work of multicultural writers in high school and college. Martin Luther King Day and Kwanzaa raise our consciousness, and the heroic tales of people like Rosa Parks inspire us.

But while we may acknowledge we are racist, we barely know we are ableist. Our schools, our textbooks, our media utterly ignore the history of disability; the dominant culture renders invisible the works of disabled and deaf poets, writers, and performance artists. The closest we have come to a national media engagement is the 1998 six-part NPR radio series *Beyond Affliction* and a few references to deafness in the TV series *ER*. Motion



pictures still largely romanticize or pathologize disability; there is not much else to make the experience of 16 percent of the population come alive realistically and politically.

Yet 72 percent of people with disabilities are unemployed, and their income is half the national average. Among working-age adults with disabilities, the poverty rate is three times that of those without impairments. One-third of all disabled children live in poverty; and despite the Americans with Disabilities Act, a judicial backlash has been under way ever since its passage in 1990. From 90 to 98 percent of discrimination cases brought under the ADA by people with disabilities have been lost in court. . . .

Anita Silvers notes this fact when she writes: "the courts tend to implement prohibitions against discrimination so as to favor paradigmatic members of the protected class. In doing so, they propel individuals whose experiences diverge from those of the class's prototypes, but who are equally at risk, to the class's margins." Thus when disability meets race, disability is propelled to the margins of the class.

From a legal perspective, one wants to make sure that members of a historically unprotected class receive proper justice and consideration under the law. Thus in America, women and minorities have been the focus of antidiscrimination law. There has been much cultural work done to make it acceptable at the end of the millennium for such groups to have public respect and sympathy. Countless novels, movies, and plays have accomplished this goal over the course of the twentieth century. It is unimaginable that a film could be made now that would present African Americans, Native Americans, or women as members of a deservedly subordinate, disenfranchised group. Thus the courts will, in the most obvious cases, uphold the right of members of such groups to redress wrongs in housing, employment, discrimination, and so on.

However, disability occupies a different place in the culture at this moment. Although considerable effort has been expended on the part of activists, legislators, and scholars, disability is still a largely ignored and marginalized area. Every week, films and television programs are made containing the most egregious stereotypes of people with disabilities, and hardly anyone notices. Legal decisions filled with ableist language and attitudes are handed down without anyone batting an eyelid. . . . Newspapers and magazines barely notice the existence of disability and largely use ableist language and metaphors in their articles. In other words, disability may be the last significant area of discrimination that has not yet been resolved, at least on the judicial, cultural, and ethical levels, in the twentieth and twenty-first centuries. . . .

So when it comes to violence against people with disabilities, several factors intervene. Although many states have statutes that describe disability in a list of categories that are protected under hate crime legislation, the actual enforcement of such policies may be muted by the intersectionality I have been describing. The Violent Crime Control and Law Enforcement Act of 1994 defines a hate crime as one "in which the defendant intentionally selects a victim, or in the case of a property crime, the property that is the object of the crime, because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability or sexual orientation of any person." . . .

Tellingly, though, a distinction is often made in this legislation. For example, previously under California's hate crime law, a murder committed because of the victim's race, color, religion, ancestry, or national origin could bring the death penalty or life in prison without parole. However, the maximum penalty for a murder based on gender, sexual orientation, or disability was twenty-five years to life in prison. A new bill signed in September 1999 increases the maximum in those latter categories to life in prison without parole. Federal efforts to prevent hate crimes, however, are now restricted to race, color, religion, and national origin.

Several U.S. senators have sponsored legislation to extend protections to gender, disability, and sexual orientation. But this idea ultimately did not pass into law and, even if



it had, hate crimes based on disability are unlikely to carry as stringent a penalty as crimes based on hate for race, color, religion, or national origin. . . .

But how do we determine, in any philosophical sense, that one kind of identity is more important than another? Historically, although the United States was founded on a separation of church and state, religion has been seen as a “holy” category certainly higher in status than, for example, one’s sexual orientation; race, so embroiled in the nation’s history, must be more important than something like disability; and so on—the arguments are based more on ad hoc judgments about the viciousness of different kinds of prejudice than on any principle one can articulate. This seems to be the same unreflective influence that gives priority to race over gender or disability in the intersectionality argument.

We can see this contradiction in another arena. The FBI is required to keep track of hate crimes. It has produced a report that found that of the 8,049 incidents of hate crime reported to police in 1997, 12 were motivated by bias based on disability; of these, 9 were based on the victim’s physical condition and 3 were based on the victim’s mental condition. These numbers seem shockingly low when compared to other studies such as Dick Sobsey’s tabulations. Sobsey also notes that when a person with disabilities is a victim of crime, it tends to be a violent crime rather than a property crime.

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Indeed, I am sure that when it comes time for the FBI to list the report on Byrd, they will file it under racial hate crime rather than a disability-related crime. Also, many of the crimes against people with disabilities will simply be seen as ordinary rather than hate crimes. So the rape or murder of a mentally ill resident of a sheltered facility will be seen as a rape or murder, not as one motivated by the status of the person involved. Indeed, one of the arguments used by opponents of hate crime legislation, particularly as it applies to gender or disability, is that crimes such as rapes will have to be investigated by the FBI, putting an undue burden on that organization. Since such crimes are daily occurrences, and since it could be argued that rape itself is a hate crime against women, the FBI will be taxed to the utmost in trying to detail all these acts of violence.

Intersectionality argues that individuals who fall into the intersection of two categories of oppression will, because of their membership in the weaker class, be sent to the margins of the stronger class. What these statistics suggest is that the category of disability, while a weak one to judges or legislators, is a powerful one to those who seek to victimize. Rather than minimizing an identity, victimizers are drawn to the double or triple categories of race, gender, and disability. Each of these categories enhances the opportunity for hate and the likelihood that the crime will go unnoticed, unreported, or disbelieved. For example, the Center for Women’s Policy Studies reports that virtually half of the perpetrators of sexual abuse against women with disabilities gained access to their victims through disability services, and that caregivers commit at least 25 percent of all crimes against women with disabilities. In other words, the dependency of such women, compounded by their lower economic status, ethnicity, and diminished mobility or ability to communicate to authorities, is an enticement to victimizers.

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The point here is that the general climate of ableism makes it comfortable for us to regard systematic violence against people with disabilities as accidental. Could one claim that the university’s policy of negligence toward students with disabilities, especially after being forewarned, was a willed act of violence? The consciousness of the general public and the legal system would have to undergo a dramatic change for the truth of such a claim to be obvious.

Likewise, the definition of “hate” has to change as well. One of the reasons there is resistance to calling attacks against people with disabilities “hate” crimes is because the general ideology toward people with disabilities rules out hate as a viable emotion. In our

culture, it is permissible to “pity” or even “resent” people with disabilities. . . . Thus the idea that crimes against people with disabilities might be a result of “hate” seems to most people somehow wrong. Who would act violently toward a person using a wheelchair merely because that person could not walk? . . . someone cannot see a clearly posted sign, cannot walk up unblocked stairs, needs special assistance above what other “normal” citizens need[?] This kind of hatred is one that abhors the possibility that all bodies are not configured the same, that weakness and impairment are the legacy of a cult of perfection and able embodiment. When the law begins to catch on to this level of hatred, justice will be served.

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