

**Problematizing Vulnerability:
Engaging Studies in Ableism and Disability Jurisprudence**

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Introduction¹

This paper builds upon over a decade of work around developing the concept of ableism, its nuances and theoretical application in the lifeworld of people with disability. I extend the theoretical scoping developed in my major work *Contours of Ableism* (2009), especially around matters interconnected to relationality – causality, vulnerability and social exclusion. The grounded context of my discussion is situated within the discipline of law and the ‘vulnerable’/disabled subject of public policy and law.

The paper is divided in two parts. Part 1 outlines *ableist terrains*, scoping disability as relational, a synopsis of studies in ableism, the building blocks of theory about ableism and social exclusion. Part 2 concerns the *application of ableism* in to notions of vulnerability and consequences for judicial and state action. The paper will introduce *studies in ableism* with particular attention to adopting ableism as a methodology for ‘problem’ appraisal and strategies for inclusion. It will then interrogate dominant discourses of vulnerability (disabled people as *vulnus* or wounded, having a stable trait (Fineman, 2008, 2010, 2012; Ingram & Price, 2010; Ingram & Gallagher, 2010; Misztal, 2011) incorporating discussion around the biopolitics of disabled people as a *suffering population* (Butler, 2009; Kaul, 2013; Lloyd, 2008), that is an immutable, discrete insular minority and hence should be a protected class.

Part 1: Ableist Terrains

Ableism is a system of causal relations that produce processes and systems of entitlement and exclusion (Campbell, 2013). This causality fosters conditions of microaggression, internalised ableism and in their jostling, notions of (un)encumbrance. A system of dividing practices; ableism institutes the reification and classification of populations. Ableist systems involve the *differentiation, ranking, negation, notification* and *prioritisation* of sentient life (Campbell, 2013). As such it is a useful schema for the reframing of understandings of dis(ability), capacity and strategies of intervention in the lives of people with disability. A reconsideration of the status of disabled people from the perspective of ableism as a *matrix of power* and ableist relations as *terms of engagement* by individuals and the law can problematise the hegemonic framing of disabled people as ‘vulnerable’ legal subjects. We can then alternatively focus on what I argue is a more constructive framework, that of *precariousness*. Studies in ableism can assist in unmasking ‘good imperialism’, those judicial practices clocked by discourses of care and protection and institute alternative ways of negotiating the disability experience within the legal system.

Disability produced in relations

There are many ways to think about and designate disability and bodily difference. We are perhaps familiar with the biomedical approach (a first wave approach to disablement) and more recently the concept of the social model of disability (the second wave of disability paradigm) which links the designation ‘disability’ to capitalist economy and social organisation. Hence both the first and second wave of studies towards disability operates along the lines of a *linear*

¹ This paper is dedicated to Niluka Gunawardena who remains strong and defiant in the face of enduring vulnerability, without her this paper would not have been written.

unidirectional causal paradigm where there is a proximity linkage between exact causes and extant effects. The rehabilitation model, architectural design, the economy or the adoption of prognosis diagnostics is indicative of a paradigm that proposes that “similar causes yield similar effects, and that different effects derive from difference causes” (Macy, 1991, 9). An exemplar of this manifestation is the rise of actuarialism and nosologies of disease.² Much of the research around the world especially in Western countries, has taken as its focus disability as a *problem* and has studied the disabled person in individualized modes, promoted assimilation instead of uncovering the processes of abledness that sustain the existence of disability as an operational difference (Campbell, 2011; Goodley, 2012).

In the past decade or so these approaches have been revised and developed into what can be described as a *relational-cultural model* which sees disability in terms of an evolution; an interaction between the impairment and the environment, the person and others. Known as the third wave of disability studies, this relational-cultural model is drawn from a French view of disability which understands the formation of the notion of disability as a relational, intersubjective encounter:

Disability as a *confrontation* between the ability of a person and situations she encounters in life ‘macro-situations’, such as work or schooling, or ‘micro-situations’ such as cutting meat or using the keyboard of a computer. The disabling situations are not only structural and material, they are also (especially) cultural [my emphasis & translation] (Hamonet, 2006, p. 1).

The perspective moves beyond abilities and limitations and embraces subjectivity acknowledging the person’s perception of difference in his /her body. Taking on board the conceptual notion of disability as a relational concept means that the production of disability must *not be a by-product of our faulty interaction* with differences in mentalities and bodies. This third configuration of disablement is reflected in the framework of the *Convention on the Rights of Persons with Disabilities*.³ The *Preamble* states:

disability⁴ is an *evolving concept* and that disability *results from the interaction* between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others. (*Convention on the Rights of Persons with Disabilities*, 6 December 2006, at [e], my emphasis).

The strength of the Convention is that its formulation of disability goes beyond functional and medical orientation of traditional disability models which remain fixed and predictive. Instead the Preamble proposes a dynamic definition full of fluidity and change. Significantly, the Preamble’s formulation is thoroughly situated within a matrix of relationality. Article 1 of the Convention goes on to list the more usual type of functional and classificatory approaches to disability, yet there is room to even interpret these categories through the lens of an intercultural understanding as made possible through the emphasis of the Convention’s *Preamble*.

² See Campbell 2011. An example is ICD-10, the International Classification of Diseases.

³ United Nations General Assembly, *Convention on the Rights of Persons with Disabilities*, 6 December 2006, <<http://www.un.org/esa/socdev/enable/rights/convtexte.htm>> (29 April 2008) at [e]

⁴ It would be interesting to substitute to word ‘disability’ with ‘health’ and invert the Preamble’s logic and examine enhancing attitudinal and environmental assets.

The 3rd wave notion of disability as a relational concept is extended by Studies in Ableism (a fourth wave of disability studies) which insists that *all* bodily relations (animate –human/non-human and inanimate (objects/nature) are produced within a *matrix of ableist causal relations*. One result of causal relations being the creation of the subjective beingness referred to as, disability created through interactions.

Studies in Ableism

What is meant by the concept of *ableism*? The literature suggests that the term is often used fluidly with limited definitional or conceptual specificity. The work of Carlson (2001)⁵ and Campbell (2001) represented a turning point in bringing attention to this new site of subordination not just in terms of disablement but also *ableism's application to other devalued groups*. Ableism is deeply seeded at the level of *knowledge systems of life, personhood and liveability*. Ableism is not just a matter of ignorance or negative attitudes towards disabled people; it is a schema of perfection, a deep way of thinking about bodies, wholeness and permeability.⁶ As such integrating ableism into social research and advocacy strategies represents a significant challenge to practice as ableism moves beyond the more familiar territory of social inclusion and usual indices of exclusion to the very divisions of life.

Bringing together the study of existence and knowledge systems, ableism is difficult to pin down. Ableism is a set of *processes and practices* that arise and decline through sequences of causal convergences influenced by the elements of time, space, bodily inflections and circumstance. Ability and the corresponding notion of ableism are intertwined. *Compulsory able-bodiedness* is implicated in the very foundations of social theory, therapeutic jurisprudence, advocacy, medicine and law; or in the mappings of human anatomy. Summarised by Campbell (2001, 44) *Ableism* refers to;

...A network of beliefs processes and practices that produces a particular kind of self and body (the bodily standard) that is projected as the perfect, species-typical and therefore essential and fully human. Disability then is cast as a diminished state of being human.

Writing today (2013) I add an addition to this definition: 'The ableist bodily configuration is immutable, permanent and laden with qualities of perfectionism or the enhancement imperative orientated towards a self-contained improvability'. Sentiency applies to not just the human but the 'animal' world. As a category to differentiate the normal from the pathological, the concept of *abledness* is predicated on some pre-existing notion about the nature of *typical species functioning* that is beyond culture and historical context. Ableism does not just stop at propagating what is typical for each species. An ableist imaginary tells us what a healthy body means – a normal mind, the pace, the tenor of thinking and the kinds of emotions and affect that are suitable to express. Of course these 'fictional' characteristics then are promoted as a *natural* ideal. This abled imaginary relies upon the existence of an unacknowledged imagined shared community of able-bodied/minded people held together by a common ableist world view that asserts the preferability and compulsoriness of the norms of ableism. Such ableist schemas erase differences in the ways humans express our emotions, use our

⁵ Carlson (2001) focuses on feeble-mindedness and women.

⁶ See links to CRPD strategies around community education.

thinking and bodies in different cultures and in different situations. This in turn enacts bodily Otherness rendered sometimes as the 'disabled', 'perverted' or 'abnormal body', clearly demarcating the boundaries of normal and pathological. A critical feature of an ableist orientation is a belief that impairment or disability is *inherently* negative and at its essence is a form of harm in need of improvement, cure or indeed eradication.

Studies in Ableism (SiA) inverts traditional approaches, by shifting our concentration to what the study of disability tells us about the production, operation and maintenance of ableism. In not looking solely at disability, we can focus on how the abled able-bodied, non-disabled identity is maintained and privileged. Disability does not even need to be in the picture. SiA's interest in abledness means that the theoretical foundations are readily applicable to the study of difference and the dividing practices of race, gender, location and sexual orientation. Reframing our focus from disability to ableism prompts different preoccupations:

- What does the study of the politics of 'vulnerability' tell us about what it means to be 'non-vulnerable'?
- Indeed how is the very conceptualisation of 'autonomy' framed in the light of discourses of 'vulnerability'?
- In representing vulnerability as universal does this detract from the specificity of disability experiences?

SiA examines the ways that concepts of wellbeing, vulnerability and deficiency circulate throughout society and impact upon economic, social, legal and ethical choices. Principally SiA focuses on the limits of tolerance and possessive individualism. Extending the theorization of disability, studies in ableism can enrich our understanding of the production of vulnerability and the terms of engagement in civic life and the possibilities of social inclusion. I now turn to unpacking the nuances and structure of a theory of ableism.

The Building Blocks of Ableism

Stage One (The Divisions)⁷

The development of ableist knowledge occurs on the basis of *relationships* shaped by binaries that are mutually forming. For example it is not possible to have a fully inclusive notion of 'health' without a carefully contained understanding of not-health (we call this disability or sometimes chronic illness). The ableist divide can also capture lopsided relations based on differences of sex, (not white) race, and animality which in knowledge and social practices have been constituted as sites of aberrancy or disability. There are two features that produce ableism relations: the idea of *normal* (normative individual); and a *Constitutional Divide*, the division enforced between the 'normal' and the 'aberrant' enacted through the processes of purification and translation.

What Normal? People who fall short of this norm (to a greater or lesser degree) are thought of as aberrant, unthinkable, underdeveloped and not fully human resulting in a compromised social and legal status. Whilst it might be easy to speculate about the kinds of people that maybe regarded as disabled and their interior life, when thinking about the essential aspects pertaining to able-bodiedness this task becomes difficult and elusive. Being able-bodied is always relational to that which is *considered its opposite*, whereas disability involves assigning labels to bodies and mentalities outside of the

⁷ As detailed in *Contours of Ableism* (Campbell, 2009).

norm. Hence relations of ableism are based on an *ontology of negation*. As a practice, ableism demands a form of individualism that is pre-occupied with self-improvement and bodily enhancement that struggles with the reality of illness, disability and misfortune.

Ableism is married to a sense of permanency of the idealized human form and competencies. With the development of enhancement technologies (cosmetic neurology and surgery for instance) the notion of the norm is constantly sliding, maybe creating a larger pool of 'abnormal' persons who because of 'choice' or limited resources cannot *improve* themselves and hence lapse into deficiency and are characterised as 'risk populations'. A counter-ableist version of impairment might explore what the experience of impairment produces and ask how does disability *productively colour* our lives?

The second feature is a *constitutional divide* between the normal and pathological. Constitutions are related to the structure or attributes of an entity which shapes a characterisation. Constitutions are concerned with jurisdiction and boundaries between persons, things and actions and the ways that each of these elements assemble and interpenetrate (Mussawir, 2011). As such constitutionality is linked to cosmography and order the terms of relations. Constitutions (rule matrices) establish the terrain, the ground rules for governance, processes for clearance and right relation and how things are or how they are meant to be. Divisions of constitutionality requires people to identify with a category – 'are you disabled or not?' 'Oh, no I am not disabled, I am ill or depressed!', or 'I am able-bodied', or "Are you fit or unfit to plead"? For the ease of conversation we often feel the need to minimise any confusion. Many of this audience will know of that such a clear divide is blatant propaganda even if they have not up until now had a name for it or find the language of constitutions a bit bristly. Bruno Latour (1993, 10 - 11) states "...these two independent practices of normalising and pathologizing] ... must remain distinct in order for them to work/function." If the definitions of *abled-bodied* and *disabled* become unclear or slippery the business of legal and governmental administration would have problems functioning.⁸ Alarm would arise due to uncertainty as to how to classify certain people and in which category; the distribution of resources would unravel.

Social differentiation produces difference: the abled and disabled which in turn are products of our ways of looking and sensing. People are made different by a process of being seen and treated as disabled, as outlawed disability or abled⁹ (Lawson, 2008, 517). Clarification of this perceived 'uncertainty' is achieved through a division called *Purification*, the marking of distinct archetypes. Ableism assists in the government of disability ensuring that populations that appear dis-ordered (maybe even causing social disorder) become ordered, mapped and distinct. The notion of inclusion is not all that it seems, for normative inclusion to be enacted one must have a permanent under-cohort of the excluded. Purification is essential to be able to count populations even if this counting and classifying does not reflect and in fact distorts reality, in any event demeanours and lives are judged according to constitutional arrangements (Altman, 2001; Mussawir, 2011). Purification has difficulty negotiating intersectional marginality and interdependent forms of impairment.

⁸ Such slippages occur in the rendering and ascertainment of IQ scores for individuals charged or convicted of criminal offences.

⁹ An example is the ongoing exclusion in some jurisdictions of drug and alcohol dependency as an impairment from disability discrimination laws. (Flacks, 2012).

Stage 2: (The processes)

A relational understanding of ableist formations is built around bringing together and adapting General Systems Theory (GST) and the Buddhist doctrine of *Paticca samuppada* (dependant origination). Systems are enclosed or are enclosed by other systems (Laszlo, 1972; McMahon, 2008) as all elements are part of a vast network of being. Accordingly the universe (a relational frame) is described as “an interdetermined network of mutually qualifying causes and effects” (Laszlo, 1972, 246), where each causal action is reciprocally transmogrified by the effect it produces. Hence autonomy and resistance is dispersed ‘to particular entities in processing their inputs (‘prime causes’) and producing outputs (‘reciprocal causes’)” (Laszlo, 1972, 247). This is a useful binder in the study of ableist relations and can assist in the plotting of often elusive relations of perfection and aberration, certainty and risk, extending to barriers toward emancipation or containment.

The system this paper is observing and mapping relates to ableist relations and GST would indicate that is it *not possible to escape* the system but that our capacity to continually *refuse, resist, (re)shape* and provide *counter codes* that modify the ableist environment is possible. Systems theory can fill in the gaps and create space for glimpsing the somewhat elusive dynamic of ableist relations. From this perspective input into the network is from the *environment (E)* by way of *percepts (P)* which act as interpretive drivers. P’s are in turn decoded through the lens of a systems *code (C)*. These ableist systems involve the *Differentiation, Ranking, Negation, Notification and Prioritisation* of sentient life and synthesises messages “from noise through [modalities of discernment] which order sensory apprehensions and through constructs which permit conceptual apprehension” (Macy, 1976; 26). In the circulation the system, the network acts upon the environment (E), to produce subsequent P’s, through its output or response (R). *Figure 1* is an attempt to plot ableist relations within a system relating to the *issue of Access*.

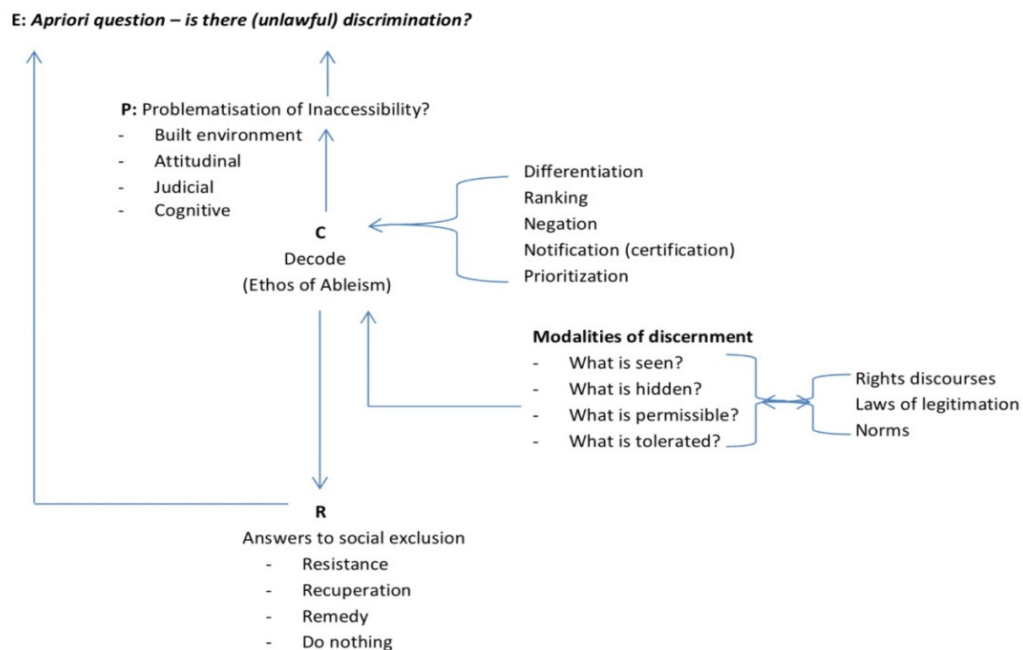


Figure 1: Ableist Systems Relations (environment, percepts, systems code, responses).

P – We might ask the question: *what is ‘access’ or ‘accessibility’ or as I later on the paper, problematise ‘vulnerability’?* There are certain presumptions in this question which shape and form the basis of the environment (built environment, cognitive, attitudinal, and legal). Responses relate to notions of differentiation between and among humans, described either as non, partial or full citizens. The interpretive filters of **P** give rise to the consideration in **E** of *whether* there is unlawful, lawful or indeed no discrimination. The interpretative lens of **P** occurs in the system code, an ableist ethos (**C**). The code is informed by such aspects as **Differentiation, Ranking, Negation, Notification** (legitimizing regulations of law and diagnostic prescriptions) and **Prioritisation**. In the mix of **C**, our systems response (**R**) suggests some possible answers:

- (1) *There is no social exclusion*, or the exclusion is at least arguable or justifiable and there is no need for response involving change, except the response of affirming the status quo;
- (2) *Responses of exceptionality*, to allow for parallel approaches or differential access (e.g. special facilities, restricted access to toilet facilities for women);
or
- (3) *A resistant response* which is suggestive of the need for norm and code changes, by way of example law reform or shifts in public policy.

In the outline of any of these responses there will be some kind of remedy even if that remedy comes in the form of restatement. Much of Figure 1 is speculative as there is nothing predetermined in the game of causality, there is always choice and a specificity of events. Hence persuasion, persistence and momentum in advocacy strategies are critical. These systems are animated when conditions converge, when matter, information and energy are exchanged to create the environment and ensure its sustainability (Macy, 1991; Ying Shen, 2007).

Within Buddhism, the concept of *Anichcha* (impermanence or temporariness) naturalizes the implications and manifestations of impermanence including impairment which is often subject to change and leakiness. The adoption of this notion of impermanence to studies in ableism enables a paradigm shift in the positioning of impairment from abnormality to actuality. In Buddhism, all phenomena are dependently arisen and as such conditions that arise at the micro level and absences produce cessation. As such, embodied existence is unstable, uncertain, tentative and conditional (Jayasuriya, 1988). Ying Shen et al (2007) provides an excellent summary of the presuppositions underpinning mutual causality:

The belief is that everything, mental and physical, comes into being owing to certain conditions, and disappears when the conditions disappear, so nothing is independent. Reality is viewed as a dynamically interdependent process. Everything exists in a web of mutual causal interaction, and nothing, whether mental or physical, whole or part, is immutable or fully autonomous. ... A cause can only produce an effect given the *right conditions* (Ying Shen et al, 2007, 171, emphasis added).

Indeed cause and effect are not necessarily sequential elements but can arise simultaneously. The unpredictability and constancy of human vulnerability is developed by Hannah Arendt in discussions of human plurality. Unpredictability results in unreliability of peoples assurances. It becomes impossible to predict the consequences

of an act within a community of equals where everyone has the same capacity to act. As Arendt argues: “any given action generates unlimited consequences as it takes place in a medium where every reaction becomes a chain reaction and where every process is a cause of new processes” (Arendt 1958: 178). The arising and conditioning of phenomena has its own texture and conditioning and these two aspects depend upon *specific conditions*. These conditions produce *specific types* and relate to structures:

...the texture of being is through and through relational. Whatever comes into being originates through conditions; *stands with the support of conditions*, and ceases when its conditions cease. (Bodhi 2005; 2, emphasis added).

The Buddhist doctrine of *Paticca samuppada* (*dependant origination*) offers an additional field for the investigation of the *conditions* that *induce* ableist relations *apropos* atomistic vulnerability in examining the *dependent condition* and how it **originates** (*samudaya*), **its source** (*nidana*), the **processes of generation** (*jatika*), **how being emerges** (*pabhava*), **is nourished** (*ahara*), how the **condition acts foundationally** (*upaniisa*) and **induces a flow** (*upayapeti*).¹⁰

This approach to theorising stimulates an inquiry and micro analysis as to what is the *nature of conditions*¹¹ in the present that produce ableist relations? This is where we should be targeting our emancipatory strategies and tactics. Figure 1 shows that there is no inevitability to how the system addressed the ‘access’ issue, with the introduction of different conditions disruptions can occur. This process could well be used to foreground the rising and declining of very specific ableist relations, which texture mental-materiality. As Macy notes it is not the input that determines its action, but what *happens* to the input within the system. This space of happening undermines the “linear concept of causality ... that similar conditions produce similar results and that different conditions will produce different results” (Macy, 1991; 93). This generative effect is not dissimilar to that argued by Campbell (2009, 6 - 10) in her discussion of structures of ableist relations which simultaneously operate through the interfusion and interactivity of translation and purification replicating and fabricating points of illusion and ignorance about the perfected and dispatched entity.¹² It is vital to drill down to the space of interactivity in translation, the interrelationality of cause and effect to “investigate what this interactivity clarifies and obfuscates” (Campbell, 2009, 9). Indeed where there is a persistence of anomalies, discontinuities and mismatches in the codes, such changes in conditions interrupts incoming precepts destabilising the sovereignty of the system code as the principle hermeneutic.

Ontoviolence: Microaggression, Internalised Ableism, Encumbrance

If she [any woman] has a role in the system, she will be concerned about the ways in which she is heard and regarded. When a court decides matters of fact, she will wonder whether the judgment has been particularized or based upon generalizations from immutable irrelevancies. When a court decides matters of

¹⁰ S.XII, 11, 23, 27, 66, 69 – Niddesa/Mahaniddesa.

¹¹ A suitable area of inquiry would be to examine to high levels of indigenous persons held indefinitely due to being deemed as unfit to plead.

¹² Campbell mainly discusses humans but leave open space for these processes to apply to other kinds of sentience.

law she will, she will wonder whether it considers and speaks to a community in which she is included (Davis, 1988: 1568).

Inaccessible relations hurt and induce generative vulnerability and as such constitute an assault on beingness and the shaping of ontological character.¹³ The character of relations that reads differences as forms of subordination, dependency and signs of deficiency produce suffering that humiliates and debases. Notions of vulnerability are exceptionalised when individuals deemed to be deficit in the attribute of autonomy are cast as ‘vulnerable populations’. Instead of denoting ‘vulnerability’ as a way to describe the fragile and contingent nature of personhood, vulnerability invokes a slippage in the expectations of self-sufficiency. Moving away from an approach to vulnerability that emphasises deficiency and dependency, a generative and innovation formulation of vulnerability acknowledges that “... we all are born, live, and die within a fragile materiality that renders all of us constantly susceptible to destructive external forces and internal disintegration” (Fineman, 2012, 101) would shift debates to consider organizational and institutional measures in assessing the State’s response to situations of vulnerability before prosecuting the individual. I have used the term *onto-violence* to capture these effects that literally seep into the interior spaces of a ‘cast out’ person’s beingness (ontological framing) producing instant and longer term defilements of the body and mind. I want to outline briefly three cyclical and dialectical relations of *onto-violence*, microaggression, internalized ableism and encumbrance.

My own work has identified that at ableism’s core is a form of *ontoviolence* (see Fig. 2) which demands a compulsory sameness and induces an assault on one’s self (beingness). (Campbell, 2012). By *ontoviolence* I mean either physical or psychological violence that is an attack on one’s very beingness or sense of self-worth. Causality fosters the conditions of microaggression, internalised ableism and in their jostling with notions of (un)encumbrance.

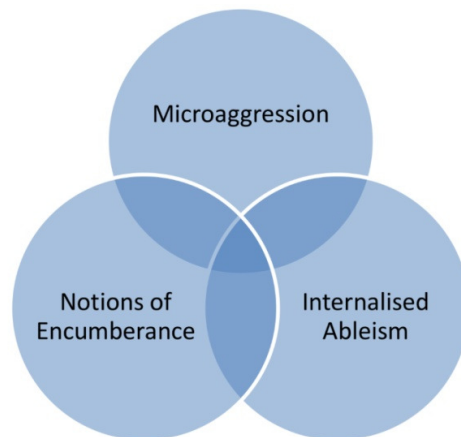


Figure 2: Mechanisms of Ontoviolence

There is a particularised relationship between conditions and the ‘types’ of phenomena or modalities that emerge to configure bodies and subjectivities (Gunawardena, & Campbell, 2012). In their emergence and unfolding *patterns* are formed (actions/reactions). Indeed ableist relations of *co-dependence* can involve co-nascent

¹³ Humiliation caused by inaccessibility can lead to low self-esteem, social phobia, anxiety and depression (Hartling & Luchetta, 1999).

conditions whereby disability and abledness are “animated in mutuality and presence.” Work undertaken by Skyttner (2001, 59) around systems indicates that systems environments exist in a *space* and it is in that space that a micro focus can be adopted to study the workings of ableist relations more closely and the targeting of particularised advocacy strategies and interventions.¹⁴

Microaggression:

Microaggression, usually involves demeaning implications and other subtle insults against minorities, and may be perpetrated against those due to gender, race and religious difference, sexual orientation, and disability status (Solorzano, 1998). According to Pierce, “the chief vehicles for proracist behaviors are microaggression. These are subtle, stunning, often automatic, and nonverbal exchanges which are ‘put-downs’ of blacks [or any other group] by offenders” (Pierce et al, 1977). Key to microaggression is the action of debasing or the state of being debased; which lowers the character or quality of a person. Richard Keller has applied a psychological approach to microaggression and disability (Keller & Galgay, 2010) which refers to these daily experiences of stares, slights, indifference and sometimes outright hostility towards us based on an assumed difference. This lowering, effectively vitiates, corrupts; contaminates and defiles the essence of person’s belongingness of civil society consigning them to “matter out of place” (Douglas, 1984). Within ableism, the existence of disability is tolerated rather than celebrated as a part of human diversification. We might wonder at this point how disabled people cope with ableist relations that provide no benefits (social capital).

Internalized Ableism:

The notion of disability as not-health is a practice that is constantly negotiating, shaping and forming the individual resulting in *internalized ableism*. The processes of ableism, like those of racism, induce an internalisation or self-loathing which devalues disablement. *Internalized ableism* is a reaction to oppression which originates outside one’s group and which results in members loathing themselves, disliking others in their group, and blaming themselves for their disadvantage – rather than realizing that these beliefs are constructed within them by oppressive, socio-economic political systems. Captured and sinking into the psyches of we disabled; internalized ableism despoils when combined with shame and humiliation a “... deep dysphonic feeling associated with being, or perceiving oneself as being unjustly degraded, ridiculed, or put down – in particular, ones’ identity has been demeaned or devalued” (Hartling & Luchetta, 1999, 264). Unspeakable silences exist regarding the study of certain aspects of disability. There is an intellectual taboo surrounding the study of internalized ableism, presumably because attention to internalized ableism may inadvertently re-pathologize the disability experience and deter ‘successful’ examples of social inclusion:

¹⁴ Skyttner (2001) divides his spatial philosophy into five realms, namely; *Pragmatic space*: (physical action which interfaces a living system with its environment); *Perceptual space*: (the immediate positioning for the identity of a conscious being); *Existential space*: (forms a stable and sensing image of an individual environment and connects their identify to the larger matrix), *Cognitive space*: (conscious experiencing of the material world) and *Abstract space*: (these are the naming /discursive worlds of abstract tools to help the individual make sense of others and objects).

- Do we have to wait until there is an appropriate level of accumulated stories of disabled people *overcoming* their past lives of tyranny and segregation? (the CRISIS or pressure cooker question)
- Or is there a necessity to also consider to vulnerability ‘costs’ of social integration within a polity of ableist relations? (The COSTS question)
- Do people with disability experience a sense of inadequacy dissonant to their success? (The ENSTRANGEMENT question).

A lack of focus on the costs of ableism has led to a shortage of research around the themes of suicide, drug and alcohol use and additional mental health stressors amongst disabled people. Margaret Vickers (2008) has undertaken some innovative work around disability bullying in the workplace and Mark Sherry (2010) has surveyed global hate crimes against disabled people. One might be led to believe that the pathologization of the disability ‘problem’ has, in contrast to matters of race, induced an acceptance and awareness of internalized ableism. The pathologization of disability means that responses to vulnerability predominantly concentrates on normalization or paternalism and is not necessarily directed to attending to the harms of ableism (e.g. living with prejudice) and resistance to oppression. There is a necessity for consciousness-raising to filter out the workings of ableism.

Internalized ableism can compel disabled people to adopt strategies of *disability disavowal* in the hope that this may lead to “enjoyment or privileges we accrue are by virtue of abandoning our identity to approximate that of the extolled group. (Watts-Jones, 2002; 592-593). This means a casting of disability into the background through a de-corporealised re-emphasis on personhood means that disability is often erased or mitigated. In effect this non-recognition of ableism suggests that disability does not matter and makes it difficult to enquire as to the ways that different knowledge standpoints place us in different relationships not just to disability, but also power and marginality. The nature of *differentially situated realities* means that there will be many different relationships with internalized ableism. Ableism on the part of some ‘abled-people’ may induce “... an experience of self-aggrandizement on an individual, socio-cultural and institutional level” (Watts-Jones, 2002, 592), whereas for disabled people especially those cognitively impaired; internalized ableism can lead to alienation and estrangement from one’s self and other disabled people.

Encumbrance

Increasingly the language of encumbrance is creeping into notions of community, productivity and worth. It is assumed that the ideal worker or citizen is *unencumbered* – that is having no liabilities (e.g. support needs, children, aged parents, disabilities, religious restrictions) and hence not vulnerable. Aside from the incorrect assumption that certain differences are to be deemed liabilities, the unencumbered citizens benefits those bodies most proximate to this productivity fiction – white able-bodied males, with a wife and no children.

In effect non-recognition of ableism suggests that disability does not matter and makes it difficult to enquire as to the ways that different knowledge standpoints place us in different relationships not just to disability, but also power and marginality. It is all too easy to become silent about the costs of living with disability in an ableist world and the differences between disabled and non-disabled people.¹⁵ Ableism can be

¹⁵ Also difference between people with disability and those considered abled bodied.

experienced as a personal deficiency on the part of the discriminated, i.e. what have I done or not done to bring about this behaviour or response¹⁶, (“blaming the victim”) rather than being aware that the experience of ableism is due to ableism and not the person’s own interaction.

Part 2: Applications of Ableism

The Nature of social exclusion

The dominant discourse in late modernity has been normalisation and more recently social inclusion. In the former, emphasis has been on modification or morphing to mitigate or to *spunk up* impairment. The latter, although promulgating diversity, actually induces ambivalent performances that reinforce the constitutionality of a health- not/health binary and leaves the ableist ethos intact. Although disability characterizes a significant portion of the multitude (between 20 – 40% of the population on some reckoning) it is driven down through a process of actuarial reductionism to be ‘discreet and insular’ (appended to around 13% of the population) – becoming exceptional rather than usual. The performative acts of the ‘logic of identity’ reduce the disparity and difference of disabled bodies to a unity (see Foucault, 1980, 117). In plain language, we disabled are all the same, capable of being slotted into diagnostic types. Disability studies has identified some enduring presuppositions that underpin geographies of disability and undercut the development of legal strategies aimed at social inclusion. The *elephant in the room syndrome*: Despite the significant presence of world citizens with disability, disability remains largely invisible on the policy and equity agendas of governments and is viewed largely as a *state of exception*.

The disabled person is rarely viewed as a normative citizen, rather as a (vulnerable) minority, an afterthought and hence ‘special interest’ group or an actuarial nightmare due to a perceived lack of identity cohesion. Disabled people are made *partial citizens* given the availability of economic reservations on equality claims in ways that would be unthinkable if the accommodations were gender or race related. We, disabled are even described as burdens by organs of the United Nations through the continued usage of metaphors of deficiency and liability in the delineation the World Health Organization method of disability-adjusted life year (DALY) which conceptualizes the impairment as the *cause* of loss of (economic) expectation and not the *conditions* of geographies of relational environments (Menken, Munsat & Toole; 2000).

I have proposed the notion that disability within an ableist polity should be understood as a *state of ambivalence*. This ambivalence relates to a perennial uncertainty, an oscillation between the degree of investment one must have in normalcy and the daily business of negotiating alterity, responding to normative shadows.¹⁷ The disabled body is profoundly compromised.¹⁸ ... Like the queered body, the experiences of microaggression and psycho-emotional ableism whilst conjuring onto-thoughts of imminent threat can also act as a sign of vitality and the becoming of the disabled life (Stanley, 2011). Transgression does not need to focus on the exceptional; rather a meditation on such encounters enables the activist disabled body to ‘plunge into’ the ordinary as a font of resistance and agency (DiFruscia, 2010).

¹⁶ Here the notion of criminal responsibility is in need of problematisation and the legal subject which is the basis for such a formulation.

¹⁷ See Overboe, (2007).

¹⁸ This is a fiction posited under ableist relations and does not necessarily bear any resemblance to the material body of individuals.

Although the policing of disability status through the regulation of the legal definition of disability varies across jurisdictions, the evicting of people with outlaw impairments (either too minor or too severe)¹⁹ does not enable further judicial scrutiny of not just an individual entitlement to reasonable adjustment but also prevents a testing of the parameters of the accommodation overall (Lawson 2008,261). Judicial refusal is a form of non-action or silence about the limits of social injury remedies as a neo-liberal intervention into the marketplace. In cordoning off reasonable adjustments to certain groups, under certain circumstances (reasonableness, undue burden, unjustifiable hardship), courts in their legal reasoning establish anomalous zones of entitlement that veil any discussion on the limits of exclusion and reasonableness through drawing upon a discourse of unreasonableness (the truly disabled). An example is the assessment of 'special services' for those on remand or in detention and jail (NSWLRC, 2012).

Certain classes are rendered (through the process of *negation* and *prioritisation*) as eligible for adjustments and social protection, and making those people 'special' a charity and not a rights discourse is invoked. Baroness Hale in *Archibald v Fife Council*²⁰ (2004) talked in terms of the *Disability Discrimination Act* (UK) is "concerned with addressing the special needs of those with serious handicaps" and not the prohibition of discrimination towards people with 'minor' impairments. Such unsettling assumptions place disabled peoples claimed in terms of moral worth and the effect of legal discourse is to scrutinise their soul and character and shifts attention away from ableist relations that exclude the participation of disabled people in social life.

Performances of Disability in Law

Compulsory ablebodiedness is implicated in the very foundations of law whether that is in terms of a jurisprudence of deliberative capacity or the foundational notion of the reasonable 'man' of law. Drawing upon Judith Butler's theories of performativity I argue that through repetition, ablebodiedness sets itself up as the ultimate achievement for disability, the goal to strive for. Ablebodiedness repetitively establishes itself as the origin and the ground of all imitation and any distraction from this normative compulsion automatically arouses suspicion and characterological doubt. Discursive practices actively produce the disabled subject at law (*lex crip*) and the impaired body becomes visible through an arrangement of meanings and social knowledges which in turn determine legitimacy, fraudulency or indeterminacy of a cause of action (see Figure 1 for an example of discrimination and access). Legal discourses through the performance and enactment of disability subjectivities play a critical role in maintaining these structures of purification between those designated as 'sick', 'well', 'deserving' and 'undeserving'. These kinds of signifiers foreground the processes and differentiation and ranking in an ableist systems code. Whilst discussing mental disability law, Michael Perlin refers to such processes as *pretextuality* which defines ways courts accept *testimonial dishonesty*, "the fiction", which distorts testimony, (the disability story) in order to achieve a desired end (Perlin, 1998, 621). This distortion of the disabled litigants experience fits well into the framework of purification, which insists on the maintenance of distinct zones of abled and disabled (Campbell, 2009) and the prioritisation of voice and legal agency. Notions of normalcy and abledness prefigure

¹⁹ See Flacks (2012) on drug and alcohol dependency as disability.

²⁰ [2004] UKHL 32.

conceptual frameworks of law and are reinforced by a belief in legal autonomy which provides for security of order, moral pluralism and predictability (Douglas-Scott,2013).

Law itself not only regulates the constitutional compartmentalization of abledness and disability, juridical systems of thought in effect bring into being what is sayable about differences²¹ and also proffer limits of citizenship and social inclusion in the realm of domestic and international laws. Non-discrimination laws have moved away from a traditional compartmentalized minority identity approach towards generic and comprehensive legislation. What are the possibilities, challenges, losses or dangers in vacating the more familiar theoretical axis of gender and race and subsuming them into a more expansive and fluid notion of ableism which attempts to act as an explanatory framework of asymmetries of difference? Indeed does the state of 'non-disability' exist and if so what exactly does *non-disability* denote?

Disabled peoples' interactions with law necessitate that disabled performativity and its ensuing subjectivities are iterated in accordance with discourses mediated within a norm of ableism. These performances of disability in law, the fabricated legal fiction of disability, produce subjectifying discourses where disabled subjects are brought into being, not just for themselves, for the for rest of those engaged in the judicial process (including the 'text', reports of law) inaugurating what can be said and what is unsayable about disability and which kinds of bodies are 're-cognised' as the protected class known as disabled. In this process Name and Form produces the existence of the disabled through a prescription in ableist systems codes that notify through regulations, legal definitions and diagnostic classifications (enumerative passports).

The work of Laura Rovner (2001) is instructive in shedding light on *lex crip* who is validated and the consequences of any resistive action by disabled litigants who do not play the game. In law the complex and contradictory stories of people's lives are reduced to 'stock stories', a simulation that is woven together to create a particular impression of wrongdoing, entitlement and remedy. Elizabeth Cain (1994) refers to the role lawyers as symbol traders, as they act as translators who 'black box' complex and contradictory facts into smooth, targeted, persuasive argument. Stock stories invest stereotypes: both negative and even positive. Boxes and stereotypes conceptualise stories and enact, perform and corral identities. The usage of negative stock stories in law can reinforce negativity and create passivity as well as fear. Disabled litigants need to self-identify with the law's definition of who is a 'genuine' disabled person (usually a statute, but also in court judgements). These stock stories resonate with dominant values (they tap into and draw upon explanatory frameworks) of disabled people as victims, unfortunates, dangerous, ruined lives, lives not worth living, damaged goods, and sufferers. Clients who embrace dominant narratives often face difficulties in shedding that representation once a case is over.

Two dominant but not exhaustive narratives, which act as differentiating practices, provide 'legitimated' performances of disability are the helpless *cripple* who is a victim or the *cheerful overcomer* (Rovner,2001 265). The trope of victim as an evaluative ranking that is saturated with an ableist outlook of culpability. *Innocent victims* are to be contradistinguished with *victims as manipulators*. Innocent victims although deserving pity have their claims to personal agency undermined. They are reduced to the permanent infantile – they are passive actors. Hence Rovner suggests:

²¹ 'Expert' testimony which involves acting as technicians of certification is often contested in the court room.

The 'cripple'²² is expected to accept her role of inferiority outside of society. She is assumed to be unable to work, and her subsequent failure to produce is interpreted as proof of her inferiority. She engages in little social activity, bears what is seen as a bleak existence, and is socially devalued. Society responds to the cripple with pity, fear and quite often repulsion, although cripples also take on the image of the 'deserving poor' nor morally blameable for their 'unfortunate circumstances' Most charitable activities to people with disabilities are premised on the notion of the cripple (Rovner, 2001, 265).

Negation, or the "diffusion of deficit" (Gergen, 1990) as an ableist strategy contrasts, victims as *manipulators* – those who do not measure up. This derelict class are characterologically suspect and jeopardise all the good work towards the disabled. These people are psychically wounded, theirs is a criminal intonation, and they are the dangerous client. An alternate narrative, the *overcomer*, engages in a strategy of disability disavowal. Here the disabled litigant literally attempts to make her disability *disappear*. This is an erasure which produces an assimilation of *disability irrelevance*, an evacuation of corporeality and its significance for the lived body. The overcomer is a hero of ableism because she puts her impairment *back in place* – because it has *no place* (or according to Mary Douglas (1984), it is *matter out-of-place*) and the harm being postured is that the impairment is about to be visualised and made to matter. The overcomer spends an inordinate amount of time going in circles in performing abledness, displacing her impairment and engaging in defensive othering. Rovner explains:

The overcomer ... seeks to minimize the visible symptoms of her disability and exhibits the 'proper' attitude. She learns to deny her disability and frequently dissociates herself from her own disability or other people with disabilities. This might be evidenced by foregoing a wheelchair even if using one would be more efficient, or by maintaining a general wariness of being spotted with other individuals with disabilities for fear of being associated with such inferior 'deviants'. The overcomer is often proud when people regard her as 'not really disabled', and society applauds her for not giving in to personal constraints and for 'conquering' her handicaps. Society thus views her as inspirational, although she is still patronised, pitied, and excluded for being different. (Rovner, 2001, 260).

Because of these two orientations the litigant with disability, if she wishes to present another approach to living with impairment, say an affirmative approach coloured with a mixture joy and despair, held in simultaneous tension, - a representation that is diametrically in opposition to dominant cultural narratives of disablement as catastrophe, "law's constraints make it impossible for [those] stories ... to be heard and recognized" (Rovner, 2001, 277). Furthermore, fabricated are particularised sites of blame that constitute certain legal subjects (and events) as responsible for the 'injury' of social subordination that other subject's experience. Through the codification of case law trauma and its performance of disability at law, institutes certain harms as "morally heinous in the law" (Brown 1995: 27). What kinds of 'harm' have legitimacy before the

²² 'Cripple' is used as a euphemism for disability, not just physical disability but all kinds.

law? The statutory language of disability (proof of identity) is according to Rovner hard wired into assessment, underpinned by a fraudster motif wherein the disabled people is seen as characterologically suspicious. Accordingly, “when law cannot hear ‘client’s stories [it]... loses any hope of tackling the real issues behind inequality and discrimination” (Rovner, 2001, 253).

Disabled People as Dangerous and Characterologically Suspect

In 1971 William Ryan wrote a provocative but well-argued book *Blaming the Victim* where he proposed that the formulation of many ‘social problem’ populations was based on the process of deflecting attention away from the complicity advantaged populations had in maintaining asymmetrical power relations that produce poverty, suffering and injustice. This kind of blame game is postulated in the language of ‘ungrateful groups, wingers, selfish and hedonistic populations’ who as Sullivan (2000) puts it are troubled by a “behavioural poverty.”²³ Turning to disability, Siebers (2008) and Davis (2002) furnish a discussion about the ways that psychosocial theories of narcissism have been used as a form of individualized victim-blaming of disabled people. Without rehashing their material, a psychology of narcissism asserts that disabled people are exemplary narcissists. In not being able to be cured, disabled people turn away from love of others towards themselves in a neurotic, disengaged form of self-gratification. In tandem with this perspective is another variant referred to as *hedonistic adaptation*, the “process of reducing the emotional effects of a stable injury” (Williams, 2011, 539); the choice of the signifier hedonism suggesting a self-indulgent pleasure.

This theory of narcissism would appear to conflict with emerging research around the experiences of disabled people and internalized ableism which indicates that there are extraordinary attempts at engagement with the abled ‘Other’ and high degrees of precariousness around self-approval (Campbell, 2009; Reeve, 2006). Ableism as a mentality and as a practice is *inherently* narcissist. As a practice, ableism demands an unbridled form of individualism that is pre-occupied with self-improvement and corporeal enhancement that struggles with the reality of illness, disability and misfortune. Ableism is married to a sense of permanency of the idealized human form. In law such narcissism plays out as the disabled litigant who is portrayed as opportunistic, or is a faker or malingerer. Disability jurisprudence (Rovner, 2001, Campbell, 2009, 2012, 2013; Oakes, 2005; Perlin, 1998, 1999) suggests that formulations of vulnerability within criminal processes have in some circumstances been mitigated by hazardous discourses of dangerousness, characterological suspicion and narcissism (Gill, 2006; Goggin, 2009).

Presumptions of the cognitive, the *sanist myths* as Michael Perlin (1998; 1999) puts it involves stereotypes, typification, de-individualization, and trivialize clients problems and solutions. Combined with a reliance on a non-reflective “ordinary common sense” (OCS). As a heuristic of the intolerability of disability it becomes possible to represent disabled litigants especially those who use non-discrimination laws for remedies against injustice, as “opportunists, malingers, shameless shirkers’ and laws as providing a “lifelong buffet of perks (and special breaks)” (Perlin, 1999; 635).

²³ In two recent EhCHR cases *Raffrey Taddei v France* (36435/07) 2010, and *Jasinskis v Latvia*, 2010 where disabled people were held in detention in appalling conditions, the national authorities authorise (Latvia and France) tried to blame the detainees themselves for their fate (in one case the conditions resulted in death).

Perlin spent several years providing individual and class action representing institutionalized persons with mental disabilities, and was used to observing “asides, snickers, and comments from judges; to eye rolling from [his] adversaries; and to running monologues by bailiffs and court clerks (about [his] clients’ ‘oddness’).” (Perlin, 1999, 9).

In the US case of *Forrisi v Bowen*²⁴ (1986), statutory protections were described as being manipulated by ‘chameleonic litigants’ who debase laws to protect those ‘truly handicapped’. Whilst in *Vande Zande v. State of Wisconsin Department of Administration*²⁵ (1995) Posner, J argued that courts in insuring *reasonable* accommodations had “bent over backwards,”²⁶ akin to *favours* towards undeserving disabled people. Lori Vande Zande sought modifications to the office kitchen which involved lowering the sink by 2 inches, so that she could use the sink from her wheelchair. Even though such a modification would cost the small amount of USD\$150 this request was denied by the court who told the plaintiff she could use the bathroom. Ms. Vande Zande argued that “forcing her to use the bathroom sink for activities (such as washing out her coffee cup) for which other employees could use the kitchen sink stigmatized her as different and inferior.”²⁷ Even though money for workplace adjustments was not the primarily issue in this case the Seventh Circuit Court of Appeals spent an inordinate amount of time railing against spending enormous sums of money that “would merely bring about “a trivial improvements” in the life of a disabled employee.”²⁸ Hence an employer is released from a duty leading to the conclusion that here that industrial rights via workplace disability accommodations are truncated as *special* rights (Oakes, 2005). This *de minimis* view exposes the ableist reasoning of the court judgment that discounts the *onto-effects of inaccessibility* as an instance of debasement²⁹; furthermore the judgment is riddled with the Posner’s continued rhetoric of the ‘complaining’ (female) plaintiff.³⁰ Furthermore, an ableist standpoint dominates the reasoning of the Court leading to the trivialization and diminution of the validity of the experiences of disabled people. Describing Zande’s claim that a failed duty “... to achieve identical conditions ‘stigmatizing’ [as] merely an epithet”.³¹

In a number of US cases, the tensions on the limits of reasonable adjustment as an intervention are revealed when the accommodation is pitched against an alleged narcissism. These cases such as *Vande* show how disability has been trivialized or rendered as opportunistic misrepresentations of trickery (*Gluckenberger*)³². Disability claims around access are inevitably framed as special measures or favours (here governments even have practices of dividing populations with similar needs into partitioned groups with different entitlements). These measures are meant to elicit *deserving gratitude* rather than entitlements that are about accommodations around difference. The significant effect of social exclusion goes beyond the immediate effects and has accumulative significance, producing *onto-violence*. Social differentiation

²⁴ 794 F.2d 931, 934 (4th Circ, 1986).

²⁵ *Vande Zande v. State of Wisconsin Department of Administration* 44 F.3d 538, 542–43 (7th Cir. 1995). 44 *Federal Reporter*, 3d Series, 538.

²⁶ *Vande Zande* [12 – 14] At 545.

²⁷ *Vande Zande* [16- 18] at 546.

²⁸ *Vande Zande* [3,4] at 442 – 543.

²⁹ Through the shutting down of the significance of the exclusionary experience.

³⁰ *Vande Zande* [16- 18], at 546.

³¹ *Vande Zande* [16- 18], at 546.

³² 957 F. Supp. 306, 974 F. Supp. 106 (D. Mass 1997).

produces difference: the abled and disabled which in turns are products of our ways of looking and sensing.

Revisiting Vulnerability

In a recent article Zizek (2008) criticises the use of the concept of tolerance as a strategy to promote justice arguing that the pursuit of this principle take attention away from the significant issues of poverty and asymmetrical power relations. In this spirit I want to commence our enquiry and ask whether the focus on vulnerability also acts as a veneer to shift our attention from the 'real' problem, namely disability oppression in the form of ableist relations. In turning to the dictionary, vulnerability is described in terms of human liability to be wounded and is characterised by the traits of weakness, defenceless, helplessness, exposure and liability. In this way, the notion of vulnerability functions as a 'rhetorical idiom', *exceptionalising* certain people as incapable in one respect or another and contains stigmatising connotations for anyone so described. Such legal fictions as "fitness to plead" do not emulate medical constructs but are produced in law and have dire consequences for those individuals coming under its reach (Mudathikundan, Chai, Forrester, 2013).³³ Bodily and mental vulnerability is still seen as weakness and is racialized and designated on cultural and minority religious grounds. Consider the *Queensland Police Service Vulnerable Persons Policy* [add date] directives on identifying a vulnerable person:

"While it is not possible to supply an exhaustive list of persons who may be vulnerable in the criminal justice system, the following could be considered a guide:

- (i) immaturity, either in terms of age or development;
- (ii) any infirmity, including early dementia or disease;
- (iii) mental illness;
- (iv) intellectual disability;
- (v) illiteracy or limited education which may impair a person's capacity to understand police questions;
- (vi) inability or limited ability to speak or understand the English language;
- (vii) chronic alcoholism;
- (viii) physical disabilities including deafness or loss of sight;
- (ix) drug dependence;
- (x) cultural, ethnic or religious factors including those relating to gender attitudes;
- (xi) intoxication, if at the time of contact with police the person is under the influence of alcohol or a drug to such an extent as to make them unable to look after or manage their own needs;
- (xii) Aboriginal people and Torres Strait Islanders;
- (xiii) children; and
- (xiv) persons with impaired capacity".

³³ It is beyond the scope of this paper to discuss issues around the construction and consequences of being deemed "unfit to plead". However I recommend (Bartlett, 2012; Mudathikundan, Chai, Forrester, 2013; Shah, 2012) and on access to justice: Bull, 2013;Edwards, 2013; Khaitan, 2012 and NSW Law Reform Commission, 2012)

The Queensland list of vulnerable populations' is interesting given there is no internationally agreed definition of 'vulnerable' with regard to witnesses (Bull, 2010, cited in Bartels, 2011). The designation of vulnerable (inferior), encumbered populations reinforce and valorise the ideal liberal subject, who is positioned as the polar opposite of the vulnerable population. Such an assortment of 'groups' to manage populations is to distribute vulnerability unequally, thus constructing those populations as precarious. (Hark, & Villa, 2011). This liberal subject is thus constructed as unencumbered, hence invulnerable, or at least *differently* vulnerable, and represents the desirable and achievable ideals of autonomy, independence, and self-sufficiency. (Fineman, 2012, 116). People with disability can experience vulnerability in ways that challenge the argument for universality, vulnerability maybe universal, but some of us are more vulnerable than others." (Kaul, 2013, 105). Sherene Razack insists that such a politics of rescue associates disabled people as icons of pity: "Pity is the emotional responses to vulnerability and being saved, the only outcome" (Razack cited, 1998, 132), on 106). Masquerading as "good imperialism" the saving impulse designates much of the charity work marketed to the public for the sake of improving the lives of people (Jarman, 2005).

There is a necessity to examine the ways disability is foregrounded to mobilize ethical interventions. Disability marks an essentialised vulnerability which functions as the representative borderline between the limitless potentialities of the unencumbered person sharply contrasted with the inevitable suffering and limited existence encumbered and harmed populations. Within this problematic binary, vulnerability functions discursively to perpetuate an artificial and monolithic abled - (dis/un)abled divide. To study vulnerability as 'a specific label, a pathologization can result in the deployment and justification of targeted actions towards or against specific groups of people. The basis of 'health' has undergone a shift as bodies are transformed by new technologies. The 'healthy person' is now readily identified as engaged in the pursuit of ideal conditions of physical and mental well-being, and in this way 'health' is a matter of negotiation with 'risk'. Cultural practices, social techniques and institutional arrangements that are now committed to the pursuit of health are heavily implicated in the normalisation of the language of risk (Peterson and Wilkinson, 2008).

There are however alternative ways to think about vulnerability and rescue its association with an *exceptionalised* deficiency and stigma. Legal theorist Martha Albersson Fineman and philosopher Judith Butler have developed different formulations of vulnerability which bode well with a critique of ableist constructions of the human and shift analysis away from cordoned off populations and linkages to entitlement by "concentrate[ing] on the structures our society has and will establish to manage our common vulnerabilities" (Fineman, 2008,1). Furthermore, Butler notes certain classes of bodies appear more precariously than others, contingent on which "versions of the body, or morphology in general, support or underwrite the idea of the human life that is worth protecting, sheltering, living, mourning" (Butler, 2009, 53). In an interview Butler describes vulnerability as including "all the various ways in which we are moved, entered, touched, or ways that ideas and others make an impression upon us (Butler in Hark, & Villa, 2011, 200). Less neutrally, vulnerability invokes being cast out, vulnerability returns inevitability to the experience of not belonging to the world, being *superfluous*, having "... the experience of being nothing. But belonging to the common world, is also the place of trust, the trust of Others, the trust in Others, sharing and communication. (Châtel, 2004 , 21).

Vulnerability – it's all of us

The concept of vulnerability reconciles the fact that we *all* are born, live, and die within a *fragile materiality* that renders all of us constantly susceptible to destructive external forces and internal dissolution. Vulnerability should *not* be equated with harm any more than disability inevitably means loss of capacity. Properly understood, vulnerability is *generative* and presents opportunities for innovation and development, as well as inventiveness and fulfilment. As Fineman puts it “both the negative and the positive possibilities inherent in vulnerability recognize the inescapable interrelationship and interdependence that mark human existence” (2012, 101). While human vulnerability is *universal, constant, and complex*, it is also particular, we are individually positioned differently. Individuals have different forms of embodiment, and also are differently situated within a matrix of ableist relations, characterised by economic and institutional relationships that structure opportunities and choices. The normalisation and universalisation of vulnerability blends with the thought of Judith Butler concerning precariousness. For Butler, the reality of persistent insecurity and impermanence is rooted in a constitutive and persistent vulnerability. Like Fineman, vulnerability is figured as “a collective condition, characterizing us all equality” (Butler, 2005a: 35). Instead of imaging community and human relations in terms of autonomy and independence, Butler suggests a community premised on the basis of vulnerability and loss. As Butler reminds us “the problems of primary vulnerability to other, one ... cannot will away without ceasing to be human” (Butler, 2004a: xiv). This realisation unmask the delusion of autonomy and invulnerability, and as Butler states “challenging the very notion of ourselves as autonomous and implicated in lives that are not our own”. (190). Key to this unmasking of vulnerability is *recognition*, “a recognition through which we open ourselves to one another and to the possibilities of something different” (Kaul, 2013, 102).

A belief in autonomy and invulnerability is associated with an ontoviolence, or as Butler denotes, a normative violence. Normative violence is the violence of the norm, i.e. it is not physical violence *per se*. The norm produces violence by not allowing people to be what they desire to be at the most fundamental aspects of life; hence it is *violence by restriction* and *negation*. Grounded and decoded by an ethos of ableism based on ableist systems codes involving the *Differentiation, Ranking, Negation, Notification and Prioritisation* of life. Butler argues that it is normative violence which makes bodily violence possible, and simultaneously imperceptible. Imperceptible violence is violence that is socially not viewed as violence because of its normalisation.³⁴ Imperceptible violence it is tolerated and normalised because it is propagated in response to social contraventions. Instead Butler (2009, 33) argues that “the body is a social phenomenon; it is exposed to others, vulnerable by definition. It's very persistence depends upon social conditions and institutions, which means that in order to ‘be’, in the sense of ‘persist’, it must rely on what is outside itself”. ...all kinds of injuries can be inflicted if one maintains that one is exceptionally vulnerable to being injured” (Butler, 2009, 201).

³⁴ An example is the sexual assault of women with disabilities especially those with intellectual disability who have great difficulty in bringing their cases to court. Sexual assault is often conceived by service providers as an industrial administrative issues rather than one involving a breach of the criminal law and hence reportable. Elsewhere I have argued that the humiliation of disabled people is routine to the extent it is not questioned even by safeguarding authorities. (Campbell, 2012).

The *presentation* of vulnerability is not the same as vulnerability. Indeed, vulnerability can be most intense precisely at the moment when it is not exposed; and when it feels to be particularly insurmountable, it becomes something that we only feel we must conceal from others, but also ourselves. Vulnerability is articulated as a characteristic that positions us in relation to each other as human beings and also suggests a relationship of responsibility between state and individual (Fineman, 2010). The domain of bodily vulnerability is defined as a vulnerability to social and economic power. The response (R) to ableist system codes means that bodily vulnerability as a mode of being open to social structures in order to persist and to survive, and then the body is defined as a social relation that has to be negotiated in one way or another. Butler concludes that the processes of ‘precaritization’ “effectively abandon populations, rendering them disposable, and leaving them without any protections against poverty, violence, and political disenfranchisement” (Butler in Hark, & Villa, 2011, 204). As a norm against which to measure individuals, autonomy is also influential. Autonomy is defined in terms of expectations of self-sufficiency and independence for the individual. There is little or no room for an affirmative resolution of this understanding of individual autonomy with concepts such as dependency or vulnerability and evaluative ranking of human capabilities. Deprived of social assets such as family, neighbourhood and associational resources), vulnerable people who must resort to certain forms of state assistance are asked to surrender their autonomy (and privacy) and are stigmatized as dependent and failures. (Fineman, 2010, 27; Kirby, 2006, 64).

A vulnerability inquiry proposes a more thorough and penetrating equality analysis—one that considers structural and institutional arrangements in assessing the state’s response to situations of vulnerability before indicting the individual. This structural focus illustrates a second political gain to a vulnerability analysis: This alternative analysis brings *institutions*—not only individual actions under examination, redirecting our attention to their role in providing assets and interventions in ways that may unfairly privilege certain persons or groups, even if unintentionally. Fineman concludes that a “focus on the state and its institutions, as well as privilege and disadvantage, would also change the nature of the legal inquiry presented for judicial determination” (2008, 21).

What I have attempted to do in this presentation is to focus on and expand my thinking about ableist processes in order to explore mechanisms of exclusion and vulnerability through the introduction of a new methodology aimed at prompting new preoccupations and questions. It is my hope that this preliminary piece can be expanded by the application of the epistemology developed in the paper in the research concerning those people living liminally in society.

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