

*[Music by Molly Joyce 00:00 - 00:15]*

**Bonnie:** Welcome to *Included: The Disability Equity Podcast*, brought to you by the Johns Hopkins University Disability Health Research Center. This podcast challenges stereotypes of disability by sharing stories, data, and news. Each season digs deep into topics, offering multiple perspectives, and will expand your view of disability. We are your hosts. I am Bonnielin Swenor, director of the Johns Hopkins Disability Health Research Center.

**Nick:** I'm Nick Reed, assistant professor at Johns Hopkins University Bloomberg School of Public Health. On this episode of *Included*, we're talking with Dr. Doron Dorfman about his work in the emerging field of disability legal studies. Doron Dorfman is an associate professor of law at Syracuse University College of Law. His research is at the intersection of disability and health law and explores how stigma informs the legal treatment of people with disabilities among other marginalized groups.

Dr. Dorfman's work has been published in the *Boston College Law Review*, *Illinois Law Review*, *UC Irvine Law Review*, and leading peer-review journals at the intersection of law and social sciences, such as *Law and Society Review* and *Law and Social Inquiry*. His work has been cited by federal courts and the Israeli Supreme Court and has been featured on national media outlets, including *The New York Times*, *Washington Post*, *LA Times*, and *USA Today*. He's received multiple awards for his work, including the National Burton Law360 Distinguished Legal Writing Award, the Steven M Block Civil Liberties Award. Dr. Dorfman was recently selected as the 2021 Health Law Scholar by the American Association of Law, Medicine, and Ethics and St. Louis University's Center for Law and Health Studies.

Prior to academia, Dr. Dorfman was a litigator in Israel where he gave legal advice to disadvantaged workers and asylum seekers. He then completed his JSD, which is a PhD in law, at Stanford University before joining the faculty at Syracuse.

*[Music by Molly Joyce 02:19 - 02:28]*

**Nick:** Today, we're continuing our conversation with Dr. Doron Dorfman. Some of you who listened last time know we spoke about the intersection of disability and social justice through the lens of law. Today, we're gonna continue with Dr. Dorfman's work on disability con.

*Bonnie:* I am so excited to talk to Dr. Dorfman about this. I think this concept—I can't get it out of my head since he and I talked many weeks ago. I think it's genius. This is work you are well known for, this concept of disability con. You wrote an article "Fear of the Disability Con: Perceptions of Fraud and Special Rights Discourse" in the *Law and Society Review* in 2019 and then a second article in 2020 called "Unusual Suspects" in *UC Irvine Law Review*. I understand there's two other papers that are coming out this year on this topic, one of service animals and one on disability con in the pandemic. I can't wait. *[Laughter]* Can you start by telling our audience what disability con is.

*Dr. Doron Dorfman:* Yeah, sure. Fear of the disability con is this moral panic, this common apprehension that people are abusing disability law by faking disability in order to get an unfair advantage. You can think of people who are abusing disabled parking placards or fake disability to get more time on the exams at school or Social Security fraud. You can think about misrepresentation of pets as service animals. Those are just examples. The fear of the disability con is really a framework to really think about disability law more generally. It's a new lens, if you will, to look at how disability law is developing and how it actually came about and where it's going.

I think this fear of abuse really affects people with disabilities and who are trying to use their rights or request accommodations, and all of a sudden, they are not given those accommodations because people think they're faking it. In some instances, they even give up asking for those accommodations or rights in the first place because they don't want to be considered as fakers. In my work, I first raise all the history of the fear of the disability con. I also conduct empirical work to investigate what causes it in certain situations and how the people with disabilities navigate this fear of the disability con in their everyday lives.

*Nick:* I wanna read a quote and ask you to expand on it for our audience. You wrote, "Disability's fluid nature, which takes on visible and invisible forms, is the basis for the perpetual connection made between disability and fakery. This connection is a common thread running throughout the history of enacting and interpreting legislation pertaining to people with disabilities." That's a powerful quote. Can you break that down for our audience a little bit?

*Dr. Doron Dorfman:* Sure. I think one big misconception about disability is that it's static. That a person in a wheelchair is "wheelchair-bound." That if we see someone getting up from their wheelchair, that it means

that they're faking the need for it. If we see someone who's blind looking at their phone, it must be a faker. There's no way he's looking at their phone. When, in reality, disability is dependent on context, and it is fluid. It can come and go in waves throughout the day. A person could still be very much in need of a wheelchair throughout the day, where sometimes it can actually—or she can actually get up and walk short distances. Some blind people can see very large print or use disability features on their phones. That's why they're looking at it. People with mental disabilities have great functioning one day, and the next day, they really are exhausted, and they can't get out of the bed. That really shows you the fluid nature of disability.

In my work, I actually show people an image of a person coming up from their wheelchair, which is a play off on a famous meme that circulated on the Internet a few years ago, to get people's emotions and level of suspicion of disability con in those situations. Also, disability also takes on different shapes. Although we are all used to thinking of disabilities with the international symbol of access of this white image of a man in a wheelchair on a blue background, some disabilities just don't manifest themselves in such a visible way. I think those are some of the reasons why fear of the disability con is so prominent in our society.

*Bonnie:*

This concept, this is—what you just described to me is what I personally have experienced, what so many people I talk with experience. I think you've given it a name and language, and that's just so powerful and important. I'm gonna read another quote which really impacted me when I read this paper, "Despite the ADA's transformative goal of changing social attitudes towards disability, many argue the ADA has had limited success in this regard. The ADA successfully raised public awareness of the topic, and now lay people at least seem familiar with the general issues and basic concepts of reasonable accommodations. However, the statute and movement failed to change perceptions towards disability in courtrooms and the public sphere." Well stated.

*[Laughter]*

*Bonnie:*

I feel that deeply. Anyone who knows my work and me agrees. Can you talk a little bit about this interconnection between that lack of movement in society in the time after the ADA? I'm just gonna say for the audience, we are recording this just days before the 31st anniversary of the ADA. How, maybe, the disability con has held back the full potential of ADA, which, to me, is what it sounds like you're saying.

*Dr. Doron Dorfman:* I think more and more people think of disability rights as not being there just to level the playing field for some people, but it's something that they would like for themselves. Who wouldn't want to park closer to the entrance to a building? Who wouldn't want not to wait in a huge queue at a theme park? Who wouldn't want more time on exams, more money in their pockets from Social Security benefits? I think that's a lot of the ways that people actually view disability rights as some kind of a special right. This is the *[unintelligible 09:26]* special rights discourse in our society, which has been documented in law and society literature.

I think that that misconception about disability law is a byproduct of the more ways that disability rights law is being used in our society. It's the backlash against disability rights in our society. As I said, I think it does put people with disabilities in some kind of a catch 22 where they know that they can ask for their rights or for accommodations, but then there is this fear that they will be considered fakers. They would either not ask for their rights to begin with, or they will not get the rights because people think that they're fakers, and they will be harassed, or this will create this chilling effect on actually using disability rights in everyday life. I think it is—the disability con is a barrier. Some would even say it's an invisible barrier to the implementation of the ADA.

*Nick:* There's a lot to unpack there. I'm thinking a lot about this issue of the misinterpretation of equality and equity. Literally, as you were talking, I was taken back to when I was kid, my grandfather has polio, and we were at a theme park. The theme park let us go to the front of the line with him when he and I were gonna ride a ride together. I won't name the theme park. The place in the country might not surprise people if you actually think about it then. We actually had somebody confront my grandfather, saying that there's no reason that he should get special treatment and go to the front of this line. It was really jarring, actually.

I haven't thought about it in over 25 years at this point, to be honest with you. At the time, as a kid, I wouldn't have even thought, for a second, about interpreting it. What that must've been like for him to experience that kind of pushback when all he wanted to do was take his five-year-old grandchild on a ride.

*Bonnie:* Sorry, Nick. I said I wouldn't cut you off anymore.

*Nick:* Jump in. Jump in.

*Bonnie:* I certainly experienced this because I'm someone who's visually impaired. I don't necessarily "look it." A time that I really struggle with this, since we're sharing, *[laughter]* is getting on an airplane. I can't see the seat numbers. I have asked for assistance to find my seat before and been called out every time. I hate it. When I get on a plane, nine times out of ten, I sit in the wrong seat. *[Laughter]* I get called out for a different reason, but I feel at least less *[laughter]*—it feels better to be called out for that than the other thing. I don't like that about myself. That's what this is. It's something small, and it's not the biggest deal. It's the thing we are talking about.

*Nick:* To that point, Bonnie—and Doron, this would be a great transition—how does disability con differ for people with visual or invisible disabilities?

*Dr. Doron Dorfman:* I examine this issue in my paper "Unusual Suspects," where I actually use Disneyland lines and lines at Disney parks to make this claim. I wanted to look at what drives the fear of the disability con in situations of scarcity, like what we talked about the last episode on the crisis standards of care, if you think about it. I hypothesized that the suspicion would be stronger in situations where there is high scarcity of public resources. One example is the number of parking spots when there is not a lot of parking. The other one is the wait time that you have to wait in queue at a Disney park.

I hypothesized that when you have to wait longer in line, then you will be more suspicious of another person with a disability that goes ahead and cuts the line. If you are in a parking lot where there's not a lot of parking, then you will be suspicious of a person who's going and parking in the disabled parking spot. I also thought of another factor, and that is the perceived deservingness of the beneficiary of the right. That's where the visibility and invisibility of the person comes in. A person who had invisible disabilities looks less deserving to people compared to a person with a more visible, obvious type of disability.

After I ran two survey experiments on those different types of rights, the Disneyland line and the parking lot, I found, actually, that the scarcity of resources did not influence the level of suspicion at all. It was only the sense of deservingness that determined the level of suspicion against disability con. People were always more trusting of people with visible disabilities and less trusting of people with invisible disabilities. My conclusion is that when people make decisions regarding abuse of law and

they're trying to locate who's the faker and they're trying to figure out how to distribute resources, they do not do a cost-benefit analysis of what they, themselves, might need to give up. What people really care about is the fair allocation. Meaning that only the deserving person gets to use the right. That is always something that is harder to prove when your disability is invisible. It's always harder to prove deservingness or eligibility when you have an invisible disability.

In another paper that is coming up called "Suspicious Species," where I look at the use of service animals, I also show how people with invisible disabilities, like diabetes or chronic pain or PTSD, often use service dogs that are not the traditional breed of service dog. They're not Labradors or Golden Retrievers. They're usually smaller service dogs. Then they bear the brunt of suspicion of them misrepresenting their dog as a service dog. How can a small dog, a Paris Hilton—it depends on your generation—a Paris Hilton or a *Legally Blonde* type of dog can actually serve as a service dog? I think that's another way of how invisible disabilities really manifest themselves in public.

*Nick:*

I have a question about another factor I'm thinking about here in the way people derive this concept of deservedness. Do you think there's anything at play within the idea of place of work or high-functioning in society? Specifically, what I'm thinking about is when we talk with some of our colleagues who are physicians, for example, and they've achieved so much, and they've gotten to where they are, but the idea of accommodations is still important to them and necessary. Do you think there's a differential in the way someone might view their deservedness? Honestly, is there any research into that? I think it's a unique area to think about, where someone's coming from.

*Dr. Doron Dorfman:*

I think you're talking about, I think, the topic of intersectionality in some way. This is an intersectionality between class and disability con in some way. Deservingness is a concept that comes from people who study welfare rights. I think there, it was used in a very specific way to look at social policy in regard to welfare rights. I took this concept, and I made it a little bit more inclusive to include deservingness in everyday life. I do think that the way people dress and the way people—their names and their skin color or the way they project themselves really impacts disability con in a lot of ways. I think it's an infinite way [*laughter*] of doing research.

We can do more, and we should do more and more research at the intersection of race and class and gender in those topics. I'm happy to do that. I have to say that I touch upon it in some of my research, and I do see some applications of this, but it's still something that I need to look at more rigorously through data, I think. I wrote most of my work on the disability con—not all of it, but most of it—during my doctoral dissertation. I also needed to finish a dissertation. *[Laughter]* That's why I didn't reach it to that point yet. Hopefully, in the future.

*Nick:* I think I know what Bonnie's thinking right now 'cause I'm thinking the same thing. That is, we need to provide you the data so you can do this.

*Dr. Doron Dorfman:* I can help you collect it. I also collect data myself. I love collecting data.

*Nick:* Just so you know, I did not mean we, as in Bonnie and I. Although, we are involved in that. I meant our field, all of us together. You, us on this call, your colleagues at Syracuse, our colleagues at Hopkins, our friends at Colorado, Michigan. I think, as a field, we just need to do a better job. I think, as a country, maybe as a species even, let's go global, we need to do a better job here.

*Bonnie:* I agree. *[Laughter]* There was a really interesting finding from this paper, Dr. Dorfman, that I also can't get out of my head. It was that you note that people with disabilities, how they experience suspicion themselves impacts their suspicion of other people's disability. *[Laughter]* That concept seems counterintuitive. You call that counterintuitive nature out in the paper. Can you discuss this result and this finding for our audience?

*Dr. Doron Dorfman:* Yeah. *[Laughter]* When I wrote the—it's from the first paper. It's from the "Fear of the Disability Con" paper from 2019. When I first looked at the data, I was also shocked myself *[laughter]* by this result. Because that paper uses an observational survey and it doesn't have causal inference, like in my other papers where I actually run experiments, I actually need to think of an explanation myself. I think what we see here is this process of internalization of stigma. That people with disabilities who were suspected themselves of faking it internalized the social stereotype of disability con to such extent that they are now more suspicious of others compared to disabled people who did not experience suspicion themselves. That's the comparison group.

In other words, disabled people who were falsely suspected seem to think of themselves, “Others may have been wrong about me faking my disability, but they must be right that many others are abusing the system, and so I should be more alert to this phenomenon. I should be more suspicious of others.” This whole process of the internalization of stigma is really, I think, at work here.

*Bonnie:* I’m so curious if this is, in fact, playing out—which my suspicion is, perhaps, it really is—is then how that advances the disability con. To have someone with a disability be suspicious of others with a disability. I’ve certainly seen that happen. Then how that feeds this whole narrative.

*Dr. Doron Dorfman:* That’s *[laughter]* one of the biggest questions, I think, in this research. I think this whole body of work really brings to bear a very, very important question that I think that I get a lot when I deal with economists. Economists, when they read my work, they first wanna know how much abuse there really is in our society. Are people just thinking that this is happening, or is it really happening? What I tell those people is that—and actually, in my paper, in “Unusual Suspects,” I actually bring a number. I say, “There’s 11 percent of abuse of parking placards in LA County. Now, what do you think of that?”

What I see is that it’s not really helpful *[laughter]* to know. One person would say, “Well, 11 percent is a lot of abuse. We need to change the whole policy and make sure people are not abusing it.” Well, another person would say, “Well, I don’t know, 89 people are using it correctly, so I don’t see any problem.” It becomes more not of a legal question but more of an ethical question or a political question, if you will. I think what my work really brings to the foreground is this question of, how much abuse are we, as a society, are willing to take in order to accommodate people with disabilities and in order to be an inclusive society?

I think that’s a really important question, but it’s not a legal question. It’s an ethical question or a political question, as I said. It’s something that is intertwined in our society in a lot of ways. The biggest accomplishment of my career, thus far, has been a federal court judge in Mississippi citing my work in a case on Social Security benefit. That was a qualitative type of work where the data was qualitative, and I talked with people who went through the process of claiming Social Security benefits. They told me about their experiences.

What I really liked about that dictation, what made it so meaningful to me is that that judge really took that data and inserted it into the court decisions to really make people understand how flawed and how bad our SSI and SSDI system really is. He really did what I wanted people to do with my work, in some way, to really express and really showcase and center the experiences of people with disabilities in the world and to show all the flaws within our black-letter law system and with black-letter law and how black-letter law really translates in everyday life.

*Nick:*

That's amazing. I'm also struck by the concept of just how much fraud are we willing to live with as a given that there's just going to be some. You're absolutely correct. It doesn't strike me that way when I first think about it. In the realities of the world, there will always be a certain level of fraud. Where is that level that society's willing to live with? That's an incredibly deep question.  
*[Laughter]* I wanna switch a little bit to our audience. In your paper, you actually talk about and outline some strategies that we can combat disability con. Do you mind sharing those with our audience?

*Dr. Doron Dorfman:*

Sure. First, what we need to do, I think, is correct misconceptions about what falls within disability law and what does not fall within disability law. We need a better articulation of the law and policies and educate disability law and what disability law really contains not only to people who use the law, meaning people with disabilities or their family members, but to the public as a whole. That is because if you think about it, disability law is being made by everyday people interpreting what the law is and, really, making it into reality. People interact with disability law in their everyday life. When you see someone parking in a disabled parking spot and you tell them not to park there because you think it's not okay, that's enforcing disability law. Where someone at a university or in the workplace who approves accommodations for people, he also enforces disability law in everyday life.

I think there are misconceptions about what disability law is. What it's supposed to get to people is really important for people to understand, and it's also a driving force behind disability con. Another thing that needs to be done is this idea of reducing anxiety from disability by including more people with disabilities in our current lives. As people connect more with people with disabilities, they are more sympathetic towards them, and they also get the idea of disability as a fluid state. I think that would combat disability con as well.

Lastly, I think—and that is aimed more at judges and policymakers and legislators—we must not succumb to this idea of fear of the disability con and must ask and require actual evidence of abuse before assuming that there is so much abuse out there that we really need to do something about it, change a policy that will actually come back to haunt people with disabilities themselves. In “Unusual Suspects,” in my article, I give an example of accommodations for guests with disabilities at Disney park, as we mentioned before, and how a district court in Florida simply has taken for granted that there was so much abuse of the rules for disability in Disney parks that it justified changing the rules and hurting people with disabilities without Disney showing any evidence as to how prominent or how extensive this fraud is.

Now, this has been overturned by the 11th Circuit in Florida. I think that the idea that there is so much abuse sometimes drives decisions and decision-makers to actually make people with disabilities go through some extra hoops to get their rights. I think people who do disability law or know people with disabilities know how much work people with disabilities actually have in order to get their rights and how much red tape they actually need to already go through. I think once those people understand this bias that we have as a society towards thinking there’s so much abuse, maybe they won’t be so quick to stiffen the rules so much and make it harder for people with disabilities.

*Bonnie:* Yeah, absolutely. I think, perhaps, many of the audience can imagine scenarios where disability, either as an accommodation or an inclusion topic, has entered a conversation. There’s some kind of recoil by someone in the conversation. That’s the point *[laughter]* we need to change. Thank you so, so much, Dr. Dorfman, for spending so much time with us, sharing your important work. We are huge fans. We can’t wait to see what you’re doing next and for your additional papers. Thank you for being our guest.

*Dr. Doron Dorfman:* Thank you so much. I really hope to collaborate. Hopefully, somewhere or sometime in our near future, we’ll see more papers, more collaborations. Thank you so much for having me.

*Bonnie:* Thank you. I’m gonna make sure that happens. *[Laughter]*

*Nick:* Love that. Thank you.

*Bonnie:* Thank you.

You have been listening to *Included: The Disability Equity Podcast* brought to you by the Johns Hopkins Disability Health Research Center.

*Nick:* Thank you to our *Included Podcast* team and everyone that made this podcast possible, especially Prateek Gajwani, Curtis Nishimoto, and our guests. Music is by Molly Joyce. This podcast is supported by a Johns Hopkins Ten by Twenty Challenge Grant.

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