The Limits of the ADA?

Disability and Structural Inequality in the Post-ADA Era

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• **Clinton:** “we've got to figure out how we get the minimum wage up and include people with disabilities in the minimum wage.”

• **Sanders:** “it is unacceptable that over 80 percent of adults with disabilities are unemployed. We need to fully fund the Individuals with Disabilities Education Act (IDEA) and vocational education programs.”

• **Kasich:** “disabled people shouldn’t be put in a setting just because we’ve done it for the last 50 years …People who have severe disabilities can work in hospitals and grocery stores and libraries.”
From Innovator to Laggard?

- 1973 Section 504 Rehabilitation Act.

**BUT**

- Employment rates today are lower than before the ADA was enacted.
- Earnings are stagnant.
- Significant occupational “ghettoization.”
- U.S. is considerably behind other countries in terms of policy outcomes.
The Politics of Disability Policymaking

• Linking policy, labor market outcomes and persistent inequality.

• The politics of disability policymaking.
  – Why do policies look how they do?
  – What motivated policy?

• The politics of disability policy outcomes.
  – Why do policies fail?
    • Retrenchment and lack of enforcement.
  – Labor market realities: supply-and-demand factors.
  – Changing attitudes, preferences, and behaviors.
Today’s Talk

• How did disability get onto the policy agenda?
  – What were the stakes, the rhetoric, the motives?
• The politics of retrenchment.
  – Effects on labor market inequality.
• The limitations of antidiscrimination legislation?
• The economic wellbeing of people with disabilities.
  – Declining employment and increasing earnings disparities.
• Some (modest) conclusions.
Government is inescapably responsible to provide leadership which results in citizen solutions.

- Justin Dart, 1989
Getting Disability Rights onto the Policy Agenda

• An established policy area that underwent important institutional transformation.

• Section 504 – motivated by civil rights. – A departure from a service/rehabilitation model.

• Political entrepreneurship and institutional activism led the way for disability rights policy.

• A moral and economic argument for equal rights.
Framing Disability Rights Policy

• “Of humanity and self interest.”

• Independence and personal responsibility – “tax payers, not tax burdens.”
  – Employment “creates dignity.”

• Frame continuity with rights-related policy.
  – Equal access and non-discrimination are important for the economy.
Early Signs of Retrenchment

- Nixon’s “new economic realism.”
- Reluctance on regulations.
  - Stalling on rights policy led to grassroots mobilization.
- Backlash from public organizations.
- Davis v. Southeastern Community College.
- “Separate and unequal.”
The Legacy of Disability Antidiscrimination Policy

- Closed political opportunities.
- Mid-1980s – the beginning of a “golden age.”
- The ADA: “The last great civil rights legislation enacted” and the “emancipation proclamation for people with disabilities.”
- But: judiciary had a narrow interpretation of disability rights policy.
- Restoring the ADA: Congress recognizes the problem.

![State Disability Anti-Discrimination Laws, 1961-2006](image-url)
What is the reality for Americans with disabilities?
## Employment Rates and Earnings

<table>
<thead>
<tr>
<th>Disability Status</th>
<th>Employment</th>
<th>Earnings</th>
<th>Percent Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any Work Limitation</td>
<td>23%</td>
<td>$29,109</td>
<td>-38%</td>
</tr>
<tr>
<td>Cognitive Difficulty</td>
<td>32%</td>
<td>$26,520</td>
<td>-47%</td>
</tr>
<tr>
<td>Hearing and Vision Difficulty</td>
<td>56%</td>
<td>$36,143</td>
<td>-34%</td>
</tr>
<tr>
<td>Mobility Difficulty</td>
<td>18%</td>
<td>$31,125</td>
<td>-31%</td>
</tr>
</tbody>
</table>

### Other Groups

<table>
<thead>
<tr>
<th>Group</th>
<th>Employment</th>
<th>Earnings</th>
<th>Percent Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women</td>
<td>74%</td>
<td>$37,354</td>
<td>-24%</td>
</tr>
<tr>
<td>African Americans</td>
<td>80%</td>
<td>$39,357</td>
<td>-8%</td>
</tr>
<tr>
<td>Hispanics</td>
<td>83%</td>
<td>$42,247</td>
<td>-8%</td>
</tr>
</tbody>
</table>

N = 67,912

N = 50,380
Did Antidiscrimination Legislation Fail?

• The “unintended harms” argument.
• BUT:
  – Employment already in decline before ADA.
  – Only time employment and earning gaps narrowed was in the 1960s and early 70s.
• Did the ADA have any bite?
Does Disability Rights Legislation Matter and How?

### State-Level Laws & Enforcement

<table>
<thead>
<tr>
<th></th>
<th>nt</th>
<th>s</th>
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<tbody>
<tr>
<td>No ADA-like law</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>ADA charges/payouts</td>
<td>-</td>
<td></td>
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### State-Level Economy

<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>Unemployment rate</td>
<td>-</td>
<td>+</td>
</tr>
<tr>
<td>Transfer payments</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Benefits</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>SSI</td>
<td>-</td>
<td>+</td>
</tr>
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</table>

### Court Cases

<table>
<thead>
<tr>
<th></th>
<th>nt</th>
<th>s</th>
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</thead>
<tbody>
<tr>
<td>Lower court decisions</td>
<td>+</td>
<td></td>
</tr>
<tr>
<td>Liberal Supreme Court decisions</td>
<td>N= 137, 329</td>
<td>N= 19, 296</td>
</tr>
</tbody>
</table>
“…isolated statements by individual Members of Congress or its committees are incongruent or contrary to what intent really is in civil rights cases…”

Justice Powell
Judicial Resistance

- The post-Davis years.
  - The Court limited the enforcement of Section 504.
  - Undermined disparate impact as discrimination.
- Standing: Proving “disability.”
- Post-ADA – a “second retreat” from rights.
## Characteristics of Supreme Court Civil Rights/Antidiscrimination Cases by Status, 1946-2010

<table>
<thead>
<tr>
<th></th>
<th>Disability (%)</th>
<th>Sex (%)</th>
<th>Race, National Origin, Age, and Religion (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remanded, Reversed, and Vacated Cases</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>60</td>
<td>61</td>
<td>68</td>
</tr>
<tr>
<td>Conservative Decision Direction</td>
<td>69</td>
<td>34</td>
<td>50</td>
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<tr>
<td>Conservative Lower Court Direction</td>
<td>21</td>
<td>59</td>
<td>49</td>
</tr>
<tr>
<td>Affirmed</td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td>39</td>
<td>30</td>
<td>22</td>
</tr>
<tr>
<td>Conservative Decision Direction</td>
<td>21</td>
<td>21</td>
<td>55</td>
</tr>
<tr>
<td>Conservative Lower Court Direction</td>
<td>21</td>
<td>29</td>
<td>55</td>
</tr>
<tr>
<td>Total Number of Cases</td>
<td>47</td>
<td>49</td>
<td>138</td>
</tr>
</tbody>
</table>

Source: U.S. Supreme Court Database; Data downloaded and compiled from [http://scdb.wustl.edu/](http://scdb.wustl.edu/)

**Notes:**
<table>
<thead>
<tr>
<th>Characteristics</th>
<th>Outcome</th>
<th>Favorable</th>
<th>Unfavorable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average Number of Amici Filed</td>
<td></td>
<td>5.6</td>
<td>3.3</td>
</tr>
<tr>
<td>Average Number Disability-Specific Group as Amici</td>
<td></td>
<td>2</td>
<td>4.5</td>
</tr>
<tr>
<td>Solicitor General Amicus</td>
<td></td>
<td>47%</td>
<td>13%</td>
</tr>
<tr>
<td>Average Presence of ACLU and/or NAPAS</td>
<td></td>
<td>2.7</td>
<td>2.5</td>
</tr>
<tr>
<td>N</td>
<td></td>
<td>19</td>
<td>15</td>
</tr>
</tbody>
</table>
The Impact of the Courts on Labor Market Inequality

• The “trilogy” of cases in 1999.
  - Sutton v. United Airlines.
  - Murphy v. UPS.
  - Kirkenberg v. Albertsons.

• The Catch-22.

• Case-by-case.
  • yet based in blanket assumptions - contributes to occupational segregation.
The Structure of the Labor Market

• The ADA and regulatory agencies have not provided enough guidance.

• The ADA does not prescribe solutions.
  – Educational outcomes.
  – Human and social capital.
  – Preferences for non-standard work arrangements.

• Employer preferences vary by occupation and industry sector.

• Labor market segregation, clustering in low paying, declining sectors.
  – Contributes to lower earnings.
<table>
<thead>
<tr>
<th>Disability Type</th>
<th>Index of Dissimilarity</th>
<th>Index of Isolation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any Disability - No Disability</td>
<td>0.197</td>
<td>0.072</td>
</tr>
<tr>
<td>Type of Disability Compared to All</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Without that Disability</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cognitive</td>
<td>0.271</td>
<td>0.012</td>
</tr>
<tr>
<td>Ambulatory</td>
<td>0.182</td>
<td>0.015</td>
</tr>
<tr>
<td>Independent living or self-care</td>
<td>0.200</td>
<td>0.004</td>
</tr>
<tr>
<td>Sensory</td>
<td>0.163</td>
<td>0.022</td>
</tr>
<tr>
<td>Multiple</td>
<td>0.283</td>
<td>0.036</td>
</tr>
</tbody>
</table>
Employment by Occupation and Disability Status

- Food Preparation and Serving
- Personal Care and Service
- Farming, Fishing, and Forestry
- Building/Grounds Cleaning and Maintenance
- Healthcare Support
- Transportation and Material Moving
- Office and Administrative Support
- Production
- Construction and Extraction
- Community and Social Service
- Education, Training, and Library
- Sales and Related
- Installations, Maintenance, and Repair
- Art, Design, Entertainment, Sports, Media
- Protective Service
- Extraction
- Healthcare Practitioners and Technical
- Business Operations
- Life, Physical, and Social Science
- Finance
- Management, Business, Science, and Arts
- Computer and Mathematical
- Architecture and Engineering
- Legal

Legend:
- No Disability
- Cognitive
- Ambulatory
- Independent Living or Self-care
- Sensory
- Multiple

Percent Employed

0 2 4 6 8 10 12 14 16 18 20
Employment by Industry and Disability Status

- Arts, Entertainment, Recreation, Accommodations, and Food Services
- Agriculture, Forestry, Fishing, and Hunting
- Other Services
- Retail Trade
- Construction
- Educational, Health, and Social Services
- Transportation and Warehousing
- Wholesale Trade
- Manufacturing
- Professional, Scientific, Management, Administration, and Waste Management
- Finance, Insurance, and Real Estate
- Information and Communications
- Public Administration
- Mining
- Utilities

Legend:
- No Disability
- Cognitive
- Ambulatory
- Independent Living or Self-care
- Sensory
- Multiple

Percent Employed
Explaining Gaps in Annual Earnings by Disability

<table>
<thead>
<tr>
<th>Disability Status Only</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Disability (ref: none)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cognitive</td>
<td>-0.945</td>
<td></td>
</tr>
<tr>
<td>Ambulatory</td>
<td>-0.433</td>
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</tr>
<tr>
<td>Self Care</td>
<td>-0.534</td>
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<tr>
<td>Sensory</td>
<td>-0.174</td>
<td></td>
</tr>
<tr>
<td>Multiple</td>
<td>-0.993</td>
<td></td>
</tr>
<tr>
<td>r2</td>
<td>0.02</td>
<td></td>
</tr>
</tbody>
</table>

N = 1, 071, 314
Summary: Policy, Discrimination and Inequality

- Unexplained variance: discriminatory attitudes and practices.
- Policies are not prescriptive.
- Enforcement remains a problem.
- Separate and unequal system of rights.
- Political will has to be there even after policy “victories.”
  - Programmatic failures are often ignored.
Moving Forward

• Antidiscrimination legislation, neoliberalism and capitalism.
• Intersectionality – “double penalties.”
• Universalizing effects of unionism?
• “Observing” discrimination.
  – Audit-based methodology.
Thank you!

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Works referenced:


