

March 2000

Models of Disability and the Americans with Disabilities Act

Richard K. Scotch

Follow this and additional works at: <https://scholarship.law.berkeley.edu/bjell>

Recommended Citation

Richard K. Scotch, *Models of Disability and the Americans with Disabilities Act*, 21 BERKELEY J. EMP. & LAB. L. 213 (2000).

Link to publisher version (DOI)

<https://doi.org/10.15779/Z38V91G>

This Article is brought to you for free and open access by the Law Journals and Related Materials at Berkeley Law Scholarship Repository. It has been accepted for inclusion in Berkeley Journal of Employment & Labor Law by an authorized administrator of Berkeley Law Scholarship Repository. For more information, please contact jcera@law.berkeley.edu.

Models of Disability and the Americans with Disabilities Act

Richard K. Scotch†

I. INTRODUCTION

For nearly a decade, the Americans with Disabilities Act (ADA)¹ has been the main protection for people with disabilities against discrimination in employment, public accommodations, public transportation, and telecommunications.² The Act, approved by bipartisan majorities of 377-28 and 91-6 in the House of Representatives and the Senate (respectively) in 1990,³ is a comprehensive statement of public policy that people with disabilities should not be unfairly excluded from employment, public accommodations, and other aspects of public life, and that the federal government should act to protect them.⁴

One might expect that if the ADA represented a consensus in 1990, it would still enjoy widespread support today, and in fact, there have been no serious attempts in Congress to repeal or legislatively limit the Act. However, while popular criticism of the ADA persists,⁵ the legal system has become the primary arena for challenges to the ADA's broad focus and underlying assumptions. Complaints filed under the ADA have been making their way through the administrative agencies responsible for implementation and the courts for several years now. In early 1999, the Supreme Court heard five ADA cases, and a major issue in several of these cases was the Act's definition of disability.⁶

In this article, I suggest that much of the larger disagreement over the Americans with Disabilities Act can be characterized as a clash of perspectives about the meaning of disability. I do not address the specifics of statutory interpretation dealt with elsewhere in this special issue; rather, I suggest how underlying assumptions about disability frame the current debate over the ADA.

† Associate Professor of Sociology and Political Economy in the School of Social Sciences at the University of Texas at Dallas. The author would like to thank Marvin Dunson III for his comments and assistance in the preparation of this article.

1. 42 U.S.C. § 12101 (1994).

2. A brief overview of the impact of the ADA is given in FRED PELKA, *THE ABC-CLIO COMPANION TO THE DISABILITY RIGHTS MOVEMENT* 18-22 (1997).

3. *See id.* at 20.

4. *See Jane West, The Social and Policy Context of the Act, in THE AMERICANS WITH DISABILITIES ACT: FROM POLICY TO PRACTICE* 3, 21 (Jane West ed., 1991).

5. *See, e.g., Cary LaCheen, Achey Breaky Pelvis, Lumber Lung and Juggler's Despair: The Portrayal of the Americans with Disabilities Act on Television and Radio*, 21 *BERKELEY J. EMP. & LAB. L.* 223, (2000).

6. *See Joan Biskupic, Five Cases at Supreme Court Could Affect Disabilities Law*, *WASH. POST*, Feb. 21, 1999, at A3.

II.

DISABILITY AS A SOCIO-POLITICAL CONSTRUCT

Opinions about the Americans with Disabilities Act depend to a large extent on how one defines disability and the nature of the problems faced by people who have disabilities. The ADA was the culmination of a two-decade shift in federal disability policy.⁷ For over a hundred years, disability has been defined in predominantly medical terms as a chronic functional incapacity whose consequence was functional limitations assumed to result from physical or mental impairment.⁸ This model assumed that the primary problem faced by people with disabilities was the incapacity to work and otherwise participate in society. It further assumed that such incapacity was the natural product of their impairments, and to some extent their own "secondary" psychological reactions to their impairments.⁹ The corollary to this assumption was that the role of government in assisting people with disabilities was both to provide financial support to this deserving group, who could not support themselves through no fault of their own, and to help in the repair and rehabilitation of their damaged bodies and minds and any psychosocial incapacity accompanying the damage.¹⁰

In the late 1960s, a fundamental transformation occurred in federal disability policy that rejected a primarily medical/clinical model of disability and substituted a socio-political or minority group model.¹¹ Under this model, people with disabilities may be seen as a minority group subject to unfair discrimination, and the role of government is to protect their civil rights to political, economic, and social participation by eliminating that discrimination.¹² In such a formulation, the opportunities of people with disabilities are limited far more by a discriminatory environment than by their impairments.

In the socio-political model, disability is viewed not as a physical or mental impairment, but as a social construction shaped by environmental factors, including physical characteristics built into the environment, cultural attitudes and social behaviors, and the institutionalized rules, procedures, and practices of private entities and public organizations. All of these, in turn, reflect overly narrow assumptions about what constitutes the normal range of human functioning.¹³

7. For a discussion of this transformation, see RICHARD K. SCOTCH, *FROM GOOD WILL TO CIVIL RIGHTS: TRANSFORMING FEDERAL DISABILITY POLICY* (1984).

8. See Harlan Hahn, *Towards a Politics of Disability: Definitions, Disciplines, and Policies*, SOC. SCI. J., Oct. 1985, at 87, 88-89 (hereinafter Hahn, *Towards a Politics*). For a discussion of the historical roots of disability as a clinical concept in public policy, see DEBORAH A. STONE, *THE DISABLED STATE* 90-117 (1984). For an extended summary and critical discussion of the medical model of disability, see GARY L. ALBRECHT, *THE DISABILITY BUSINESS: REHABILITATION IN AMERICA* 67-90 (1992).

9. See, e.g., ROBERT A. SCOTT, *THE MAKING OF BLIND MEN* 6-8 (1969).

10. For a history of the federal vocational rehabilitation system, see EDWARD D. BERKOWITZ, *DISABLED POLICY: AMERICA'S PROGRAMS FOR THE HANDICAPPED* (1987).

11. See Scotch, *supra* note 7, at 8-9. For a general discussion of the minority group model, see Harlan Hahn, *Introduction: Disability Policy and the Problem of Discrimination*, 28 AM. BEHAV. SCIENTIST 293 (1985) (hereinafter *Disability Policy*).

12. See Hahn, *Towards a Politics*, *supra* note 8, at 93-96.

13. For a discussion of the consequences of a mismatch between natural human variation and the limited

Thus, the consequences of physical and mental impairments for social participation are shaped by the expectations and attitudes of the larger society. Michael Oliver, a leading British disability studies scholar, writes:

All disabled people experience disability as social restriction, whether those restrictions occur as a consequence of inaccessibly built environments, questionable notions of intelligence and social competence, the inability of the general population to use sign language, the lack of reading material in braille or hostile public attitudes to people with non-visible disabilities.¹⁴

Assumptions about how people perform everyday tasks, or about what people can and cannot do without assistance, are built into human environments in ways that can create barriers for those who do not conform to such expectations. If architecture and technology are based on limited images of "normal" physical functioning, they constrain individuals who must pursue alternative ways of performing various tasks. Stairs can limit the entry of people who use wheelchairs; printed words limit those who are blind. Similarly, organizational routines and public policies may limit participation through their assumptions about "normal" functioning. Fixed work schedules may exclude people whose conditions make it difficult for them to start work at 8 a.m., or who must take more frequent time off. Eligibility requirements for public assistance may assume that potential beneficiaries either are disabled and cannot work, or can work and therefore are not disabled. Thus, people with disabilities are frequently marginalized by the constraints of a constructed social environment in which assumptions of the inability to participate become self-fulfilling prophecies.

Building on this social model of disability is the assertion that, because they collectively occupy a stigmatized social position, people with disabilities occupy a social status analogous to that of racial and ethnic minorities.¹⁵ People with disabilities share many of the stigmatizing experiences and characteristics of other groups commonly recognized as minorities. They are subject to prejudiced attitudes, discriminatory behavior, and institutional and legal constraints that parallel those experienced by African-Americans and other disadvantaged and excluded groups.¹⁶ People with disabilities are victimized by negative stereotypes that associate physical or mental impairment with assumed dependence on others

expectations built into social environments, see Richard K. Scotch & Kay Schriener, *Disability as Human Variation: Implications for Policy*, 549 ANNALS AM. ACAD. POL. & SOC. SCI. 148, 154-157 (1997).

14. MICHAEL OLIVER, THE POLITICS OF DISABLEMENT: A SOCIOLOGICAL APPROACH at xiv (1990), quoted in Len Barton et al., *Disability and the Necessity for a Socio-Political Perspective*, in 51 WORLD REHABILITATION FUND MONOGRAPH 5 (International Exchange of Experts and Information in Rehabilitation (IEEIR) eds., 1992).

15. See Hahn, *Disability Policy*, *supra* note 11, at 300-301.

16. See generally FRANK BOWE, HANDICAPPING AMERICA: BARRIERS TO DISABLED PEOPLE (1978); JOHN GLIEDMAN & WILLIAM ROTH, THE UNEXPECTED MINORITY (1980); LOUIS HARRIS AND ASSOCIATES, INC., THE ICD SURVEY OF DISABLED AMERICANS: BRINGING DISABLED AMERICANS INTO THE MAINSTREAM (1986); NATIONAL COUNCIL ON THE HANDICAPPED, TOWARD INDEPENDENCE: AN ASSESSMENT OF FEDERAL LAWS AND PROGRAMS AFFECTING PERSONS WITH DISABILITIES—WITH LEGISLATIVE RECOMMENDATIONS (1986) [hereinafter TOWARD INDEPENDENCE].

and a general incapacity to perform social and economic activities.¹⁷ Such stigmatizing assumptions can result in exclusion and social isolation, including lack of access to employment, public facilities, voting, and other forms of civic involvement.¹⁸ Because of these factors, people with disabilities are denied the opportunity to fully participate in society, a form of exclusion which public policy has defined as discrimination.¹⁹ Using the Civil Rights Act of 1964 as its legislative model, the ADA seeks to eliminate this discrimination.²⁰ The sociologist Paul Higgins writes of the broad goals of the ADA:

Rather than (primarily) looking to individual characteristics to understand the difficulties experienced by people with disabilities, rights encourage us, even require us, to evaluate our practices that may limit people with disabilities. Rights empower people with disabilities. With rights, people with disabilities may legitimately contest what they perceive to be illegitimate treatment of them. No longer must they endure arrangements that disadvantage them to the advantage of nondisabled citizens.²¹

The ADA can be seen as more than a specific protection from discrimination—it is also a policy commitment to the social inclusion of people with disabilities. In 1986, the National Council of the Handicapped, a presidentially appointed advisory body, issued a report entitled *Toward Independence* that helped lay the groundwork for the development of the ADA.²² The report stated that:

[Preceding] handicap nondiscrimination laws fail to serve the central purpose of any human rights law—providing a strong statement of a societal imperative. An adequate equal opportunity law for persons with disabilities will seek to obtain the voluntary compliance of the great majority of law-abiding citizens by notifying them that discrimination against persons with disabilities will no longer be tolerated by our society.²³

Similarly, in the introduction to her authoritative, edited volume written immediately after the ADA's passage, Jane West wrote:

The ADA is a law that sends a clear message about what our society's attitudes should be toward persons with disabilities. The ADA is an orienting framework that can be used to construct a comprehensive service-delivery system The ADA is

17. For an extensive review of stereotypes commonly associated with disability and their consequences, see IMAGES OF THE DISABLED, *DISABLING IMAGES* (Alan Gartner & Tom Joe eds., 1987).

18. *See id.*

19. For a discussion of how the civil rights framework became associated with the status of people with disabilities, see RICHARD K. SCOTCH, *FROM GOOD WILL TO CIVIL RIGHTS: TRANSFORMING FEDERAL CIVIL RIGHTS POLICY* (1984).

20. *See id.* at 51-52.

21. PAUL C. HIGGINS, *MAKING DISABILITY: EXPLORING THE SOCIAL TRANSFORMATION OF HUMAN VARIATION* 199-200 (1992).

22. *See TOWARD INDEPENDENCE*, *supra* note 16, at 18-21; *see also* NATIONAL COUNCIL ON DISABILITY, *EQUALITY OF OPPORTUNITY: THE MAKING OF THE AMERICANS WITH DISABILITIES ACT* (1997) (providing an account of the policy development process culminating in the enactment of the ADA).

23. *TOWARD INDEPENDENCE*, *supra* note 16, at 18.

intended to open the doors of society and keep them open²⁴

III.

THE CONSEQUENCES OF A SOCIO-POLITICAL MODEL OF DISABILITY

Because of the ADA's reliance on a socio-political model of disability, it does not employ a simple conception of who is to be considered to have a disability and under what circumstances the treatment given a person with a disability should be considered discriminatory. The socio-political model provides a complex view of disability and disability-related discrimination by focusing upon the relationship between an individual's impairment and the nature of the environment in which that individual must function. For example, the employment provisions of the ADA define a qualified person with a disability in terms of her ability to perform the essential functions of a job with or without reasonable accommodation.²⁵ This definition relies on an analysis of the characteristics of the job as well as the characteristics of the person seeking the job.²⁶ As the statute is applied, the perceptions and expectations associated with disability and work help to shape judgments about the capacity of persons with a disability to perform adequately within specific environments.

Because of this reliance upon knowledge of the environment, the application of the ADA to specific situations may not embody a clear, abstract, behavioral standard of differential treatment. While the statute provides a number of specific examples of disability-related discrimination²⁷ and of reasonable accommodation,²⁸ the complexity of disability²⁹ and of work places³⁰ may mean that the ADA will lead to a wide variety of resolutions based on specific combinations of individual impairments, potential environmental obstacles, and possible adaptations by the person with the impairment. The application of ADA criteria will almost inevitably vary among individuals and across various social settings, and may pose unusual problems of interpretation for federal regulators and the courts. Paul Hearne, the director of the National Council on Disability from 1988 to 1989, writes that "[t]he required type of accommodation will obviously vary with the individual employee, the requirements—and the purposes—of a particular job, and the environment of each workplace."³¹

Applying the requirements of the ADA was intended by its framers to change

24. Jane West, *The Social and Policy Context of the Act*, in *THE AMERICANS WITH DISABILITIES ACT: FROM POLICY TO PRACTICE* 3, 22 (Jane West ed., 1991).

25. 42 U.S.C. § 12111(8) (1994).

26. See, e.g., Chai R. Feldblum, *Employment Protections*, in *THE AMERICANS WITH DISABILITIES ACT: FROM POLICY TO PRACTICE* 81, 88-90 (Jane West ed., 1991).

27. *Id.* at 90.

28. *Id.* at 93.

29. See SCOTCH & SCHRINER, *supra* note 13, at 154-157.

30. *Id.* at 157-158.

31. Paul G. Hearne, *Employment Strategies for People with Disabilities: A Prescription for Change*, in *THE AMERICANS WITH DISABILITIES ACT: FROM POLICY TO PRACTICE* 111, 124 (Jane West ed., 1991).

assumptions about how specific physical or mental impairments affect functioning.³² Yet if the marginalization of people with disabilities is the result of social processes that are embedded in our culture, then it is not surprising that governmental and legal institutions as well have employed a traditional medical model of disability based on incapacity that focuses on the limitations of plaintiffs with disabilities in their application of the ADA.³³ Public officials and the courts frequently mirror well-established limiting assumptions about people with disabilities.³⁴ The statute's broad definitions of who has a legitimate disability, what constitutes discrimination on the basis of disability, and what remedies are appropriate in countering such discrimination may be at odds with popular understandings of who should be treated as "truly" disabled, what their problems are, and what protections they deserve from regulators and the courts.

Further, the flexibility written into the statute may have led to a greater reliance on popular and limited conceptions of what people with various impairments can and should be allowed to do. Donald O. Parsons wrote shortly after the ADA's passage:

The human factor is likely to affect judicial behavior. . . . Cases that are either factually ambiguous or highly emotional are likely to be determined primarily by judicial preference. . . . How a judge views such cases will vary from judge to judge.³⁵

IV.

THE CONSERVATIVE CRITIQUE: ECONOMIC AND MORAL DIMENSIONS OF DISABILITY

Critics in Congress, academia, and the media have attacked the ADA's mandates, expressing skepticism over the validity of the claims of those seeking protection from discrimination related to disability and the efficacy of a civil rights (as opposed to a market) approach to improving the status of people with disabilities.³⁶ To critics, the ADA is a case of ill-considered social engineering in which an overly broad category of putative victims claimed unreasonable accommodations from society. For example, Dick Armey, Republican House Majority Leader since 1994, has called the ADA "a disaster," predicting that,

32. See Jane West, *Introduction – Implementing the Act: Where to Begin*, in *THE AMERICANS WITH DISABILITIES ACT: FROM POLICY TO PRACTICE* xi, xi-xii (Jane West ed., 1991).

33. See Robert L. Burgdorf, Jr., "Substantially Limited" Protection from Disability Discrimination: The Special Treatment Model and Misconstructions of the Definition of Disability, 42 *VILL. L. REV.* 409, 561 (1997).

34. For a discussion of the need for a reconsideration of the assumptions built into law and public administration, see Hahn, *Disability Policy*, *supra* note 11, at 315.

35. Donald O. Parsons, *Measuring and Deciding Disability*, in *DISABILITY & WORK: INCENTIVES, RIGHTS, AND OPPORTUNITIES* 72, 73 (Carolyn L. Weaver ed., 1991).

36. See generally *DISABILITY & WORK: INCENTIVES, RIGHTS, AND OPPORTUNITIES* (Carolyn L. Weaver ed., 1991) [hereinafter *DISABILITY & WORK*]; see also LaCheen, *supra* note 5; *infra* text accompanying note 37.

“Under my majority leadership, the disabilities act will be revisited and will be written properly so its focus and intent goes to people with genuine disabilities.”³⁷

As discussed above, the medical model of disability characterizes people with disabilities as having pathological individual attributes, typically linked to incapacity and dependence, which in turn may lead to social and economic isolation. This model can accommodate recognition of discrimination as a problem associated with disability, but it emphasizes that people with disabilities must “overcome” the limitations of their impairments in order to function in society. By focusing on adaptations required from people with disabilities, the medical model implies far less from employers or other social gatekeepers in terms of accommodation since the environment is taken as given.³⁸ With regard to employment, the model suggests that people with disabilities ought to adapt themselves to the demands of productivity set in the marketplace. Efficiency concerns of firms should outweigh claims of disabled job applicants, despite any social costs (or in the language of economics, negative externalities) that might be generated for society at large. One leading critic, Carolyn Weaver, has written of the ADA:

The legislation thus includes in the protected population people who, in an economic sense, are not as productive or do not make the same contribution to the profitability of the firm as other people with the same qualifications. (These are the people who can perform only the essential functions of the job and who can do so only with accommodation.) While promoting the employment of this much broader group may be a highly desirable social goal, the antidiscrimination-reasonable accommodation approach is a costly and inefficient way of doing so and is likely to have highly undesirable distributional consequences.³⁹

The conservative critique of the ADA is not solely based on grounds of economic efficiency, however. Beyond the issue of productivity is a recurrent concern about the moral legitimacy of claims made by individuals with disabilities on employers and public officials. The issue of moral basis for disability policy is a recurrent historical theme in American social welfare policy. Deborah Stone writes that the popular conception of disability “is best understood as a moral notion. . . . Disability . . . is an essential part of the moral economy.”⁴⁰ Similarly, Theda Skocpol writes, “Institutional and cultural oppositions between the morally ‘deserving’ and the less deserving run like fault lines through the entire history of American social provision.”⁴¹

Political conservatives have traditionally expressed concerns in social policy

37. Barbara Vobejda, *Disabled People See Budget-Cutting Fervor as Threat, New Attitude*, WASH. POST, Aug. 3, 1995, at A12.

38. See Hahn, *Towards a Politics*, *supra* note 8, at 89.

39. Carolyn L. Weaver, *Incentives versus Controls in Federal Disability Policy*, in *DISABILITY & WORK*, *supra* note 36, at 6-7.

40. STONE, *supra* note 8, at 143.

41. THEDA SKOCPOL, *PROTECTING SOLDIERS AND MOTHERS: THE POLITICAL ORIGINS OF SOCIAL POLICY IN THE UNITED STATES* 149 (1992).

debates that “undeserving” people might benefit from public programs.⁴² The ADA’s legislative history of the ADA establishes a broad and comprehensive definition of disability, including people with HIV/AIDS, alcoholism, most psychiatric conditions, and those with a history of substance abuse.⁴³ Conservative critics have expressed great discomfort with this broad definition. For example, a publication of the Republican National Committee has included the ADA’s regulations among those that are well-intentioned but spiraling “out of control,” at least in part because of their inclusion of “drug abusers, the obese and the ‘emotionally disturbed’” among those protected.⁴⁴

Frequently there is a moral dimension to this concern. Individuals who have conditions which are associated with engaging in morally questionable behavior or who are perceived as representing a lack of self-control or poor character may be seen as unworthy of public support. Even for some within the disability community, individuals with these conditions are not considered to be in the same moral category as people with visual or hearing impairments, or those who use wheelchairs. Some critics would even question the legitimacy of coverage for individuals with back problems, the impairment (along with spinal conditions) most often cited in early ADA complaints,⁴⁵ since the diagnosis of such problems is often based on self reports of pain and the inability to perform certain tasks.⁴⁶

Similar doubts may be raised about the moral legitimacy of the ADA by complaints that are based on conditions which some may perceive as frivolous expressions of self-indulgent victimhood such as obesity or chemical sensitivity. While people portrayed in media accounts as sad, angry, or troubled may have bona fide disabling conditions under the ADA’s definitions, there may be little public sympathy for their claims. Media coverage of individuals claiming discrimination because they are fat, or phobic, or sensitive to environmental chemicals may color public perceptions of disability discrimination, regardless of the legal validity of the complaints or their ultimate disposition. The focus of criticism and stories in the media may create an image among the public about who benefits from the law that may overshadow the empirical reality of the great majority of disability discrimination and its victims.⁴⁷

Do such concerns, based on perceptions shaped by the lenses of a limited, skeptical, and stigmatizing model of disability, constitute a backlash to the Americans with Disabilities Act? The Act is still in place, unamended and still intact, and there has been no serious attempt to repeal it, even at the zenith of

42. See, e.g., EDWARD BERKOWITZ & KIM MCQUAID, *CREATING THE WELFARE STATE: THE POLITICAL ECONOMY OF TWENTIETH-CENTURY REFORM* 12 (2d. ed. 1988).

43. See Feldblum, *supra* note 26, at 85-87.

44. Vobejda, *supra* note 37.

45. See Nancy R. Mudrick, *Employment Discrimination Laws for Disability: Utilization and Outcome*, 549 *ANNALS AM. ACAD. POL. & SOC. SCI.* 53, 67 (1997).

46. For a discussion of the difficulty of scientifically measuring pain and subjective accounts of incapacity as eligibility criteria, see STONE, *supra* note 8, at 134-139.

47. For an analysis of employment discrimination complaints under the ADA and comparable state statutes, see Mudrick, *supra* note 45.

conservative power in Congress. Similarly, there have been media accounts which cast a skeptical light on the Act,⁴⁸ but these may be no worse than traditional coverage of disability rights issues. A few media horror stories have not led to any major public outcry against the ADA or people with disabilities.

From a larger social standpoint, there may be a reservoir of good will toward the concepts underlying the ADA and toward protecting people with disabilities from discrimination and unfair treatment. Despite some high-profile grumbling from political conservatives, the Americans with Disabilities Act appears to be in fairly good health as it approaches its tenth birthday. Nevertheless, one might ask whether the ADA has had its intended effect of rooting out discrimination and improving the social position of people with disabilities. I will conclude with a brief consideration of this question.

V.

CIVIL RIGHTS AND SOCIAL CHANGE

The Americans with Disabilities Act is a potentially crucial protection for people with disabilities. Beyond the specific outcomes of legal proceedings, the ADA's mandates have led to significant expansion of access to the social, economic, and political mainstream by raising awareness about disability issues and by providing incentives to businesses and other covered entities to do the right thing. However, whatever legal protection from discrimination has been gained, it would be very difficult to argue that people with disabilities have achieved social or economic parity as the result of the ADA, or that having a disability is no longer a relevant factor in the life chances of many individuals.

But that might be far too much to expect from a civil rights law. People with disabilities face a variety of barriers to social participation, including limited human capital, social isolation, and cultural stereotypes.⁴⁹ While all of these can be directly linked to discrimination, none of them will be easily changed by an act of Congress. Fundamental and far-reaching social change will be necessary for people with disabilities to enjoy full access to American society.

The experience of African Americans has implications for the potential of civil rights statutes to serve as vehicles for overcoming social disadvantage. While Jim Crow laws and legal segregation have been abolished, the research community is divided on the effects of equal opportunity policy for African Americans' incomes and access to employment.⁵⁰ Poorly educated African Americans as a group are relatively worse off in terms of earnings or employment than they were

48. See LaCheen, *supra* note 5.

49. For a discussion of the barriers faced by people with disabilities, see Hahn, *Disability Policy*, *supra* note 11, at 304-309. For a discussion of barriers related to expanding employment for people with disabilities, see generally Edward H. Yelin, *The Employment of People With and Without Disabilities in an Age of Insecurity*, 549 ANNALS AM. ACAD. POL. & SOC. SCI. 117 (1997) and William G. Johnson, *The Future of Disability Policy: Benefit Payments or Civil Rights?*, 549 ANNALS AM. ACAD. POL. & SOC. SCI. 160 (1997).

50. See, e.g., PAUL BURSTEIN, *DISCRIMINATION, JOBS, AND POLITICS: THE STRUGGLE FOR EQUAL EMPLOYMENT OPPORTUNITY IN THE UNITED STATES SINCE THE NEW DEAL* 182 (1985).

thirty years ago, and the state of black-white relations remains far short of the goals of the civil rights movement of the 1960s.⁵¹ In fact, one of the most contentious issues in the current debate over race relations is affirmative action. The concept of affirmative action requires employers and others to take positive steps to overcome the historic disadvantages experienced by members of minority groups and women. In some ways, the concept is analogous to the positive accommodations needed to make employment, education, public accommodations, and other institutional spheres truly accessible to Americans with disabilities.

Just as the economic and social challenges facing many African Americans are not likely to be resolved by civil rights laws alone, the social exclusion of people with disabilities will not be resolved by the ADA on its own. Access to good jobs, health insurance, personal assistance, community-based services, and accessible technologies will be enhanced, but not guaranteed, by laws such as the ADA. Antidiscrimination laws may be necessary, but not sufficient, for major institutional change.

Might we then expect that the ADA can at least end overt discrimination committed on the basis of disability? If the social model of disability is correct, even this may be too great a burden to place on the legal system. The stigma associated with disability is so embedded and reinforced within our culture and social structure that it will take tremendous efforts to root out.⁵² As we have experienced in race and gender equity issues, changing cultural values and social relationships that have become institutionalized in the informal patterns of everyday life may be beyond the capacity of statutory mandates. As Donald L. Horowitz has pointed out, the courts have a built in emphasis on formal relationships, and may lack the capacity to alter informal patterns of behavior.⁵³ Such an effort may be a more appropriate task for a broadly based social and political disability movement than for a law dependent on judicial and regulatory enforcement. Interpersonal contacts may help to break down pernicious stereotypes and arbitrary limitations on people with disabilities. Grassroots advocates may be better able to educate communities about the nature of the barriers faced by people with disabilities and how the participation of people with disabilities can be achieved with beneficial results. Legal protections from discriminatory practice are probably indispensable, but such guarantees cannot be the only strategy toward ending the discrimination and social exclusion faced by Americans with disabilities.

51. Among the best recent overviews of the persistence of economic and social disadvantage among African Americans are WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* (1987) and WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR* (1996).

52. See Scotch & Schriener, *supra* note 13, at 152.

53. See DONALD L. HOROWITZ, *THE COURTS AND SOCIAL POLICY* 255-298 (1977).