
A Civil Rights Law for Disabled People

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During the 1970s, a time of increasing concern about the limits of public resources and governmental action, the federal government issued a mandate that people with physical and mental disabilities must have equal access to programs and activities supported with federal funds.¹ The mandate was unequivocal, without regard to cost or disruption to the recipients of federal funds. Why was such a commitment made? Was it only a well-meaning gesture? Was it the result of political pressure from the disabled community? Was it an isolated effort, or part of some larger public strategy for assisting disabled people?

Section 504 of the Rehabilitation Act of 1973 has been hailed as the first major civil rights legislation for disabled people. In contrast to earlier legislation that provides or extends benefits to disabled persons, it establishes full social participation as a civil right and represents a transformation of federal disability policy. Section 504 prohibits recipients of federal funds from discriminating on the basis of physical or mental handicap and, since its passage, has evolved into a far-reaching guarantee of accessibility to federally funded facilities and programs. To date, the implementation of Section 504 has mandated architectural and service delivery changes that have cost billions of dollars.

Although its importance to millions of Americans is now evident, Section 504 began as an inconspicuous segment of routine legislation.

On September 26, 1973, President Richard M. Nixon

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signed into law the Rehabilitation Act of 1973, Public Law (P.L.) 93-112. This law provided for the continuation of the vocational rehabilitation program first established by the Smith-Fess Act of 1920, under which federal financial assistance was given to the states for vocational and other services to disabled people. P.L. 93-112 authorized additional funding for the program and provided for a number of new services. At the end of the law was an apparently minor section, Section 504, consisting of one sentence: “No otherwise handicapped individual in the United States, as defined in section 7 (6), shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

The legislative history of P.L. 93-112 indicates that Section 504 had no special significance at this point in its evolution. The section was not discussed in any of the hearings held prior to the law’s passage, nor was it discussed when the bill was considered on the floors of the House and the Senate. There was no public debate on the provision, and the lengthy House and Senate reports on P.L. 93-112 refer only briefly to Section 504:

The bill further includes a provision proclaiming a policy of nondiscrimination against otherwise qualified handicapped individuals with respect to participation in or access to any program which is in receipt of Federal financial assistance.²

Section (504) provides that no otherwise qualified handicapped individual will be discriminated against or excluded from participation in any benefits of any program or activity receiving participation in any benefits of any program or activity receiving Federal assistance.³

In the House and Senate reports, the costs estimated for the implementation of P.L. 93-112 include no figures for Section 504, indicating that the bill’s authors expected that it would not entail any federal expenditures.

Section 504 was apparently a routine inclusion, a noncontroversial bow toward equal access with no significant commitment of federal authority. In the nine years following the enactment of P.L. 93-112, however, the section has had important effects on many federal programs, including the architecture of buildings housing federally funded programs, the design of urban mass transit systems, the entrance requirements and programs offered in higher education, and the employment requirements for individuals in federally operated and funded projects.

Unlike the statutory provision, the regulations for implementing Section 504 were highly controversial. The first regulation, for programs funded by the Department of Health, Education, and Welfare (HEW), was not issued until four years after passage of the law, and then only after a change of presidential administrations and sit-ins in federal office buildings in Washington and San Francisco. Section 504 regulations for other departments were not published for several additional years.

Why did Congress's brief statement of good intentions create complex problems for regulation? What were the issues that brought masses of disabled people into public forums to demonstrate on behalf of the regulations? Answers to these questions must be sought in the context of a developing civil rights movement and public policy trends.

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Because of the diverse physical, mental, and emotional conditions included within legal definitions of disability, the disabled population in the United States does not appear to be a cohesive social group. Further, as an aggregation of individuals, disabled people do not share common social positions, common cultural categories,

or common interaction patterns. Disabled persons do, however, have exclusion in common. Many disabled people have been excluded from full social participation due to their disabilities, whether because of functional limitations caused by the disabling condition or because of stigmatization. Until fairly recently, this exclusion has impeded them from developing a common identity or literally meeting on common ground. Interaction among disabled people sometimes reflects the stigmatization of disability practiced by the rest of society. In such instances, disabled individuals deliberately distance themselves from each other or make invidious distinctions between good and bad handicaps, rather than seeking to develop social ties on the basis of common experiences and similar social positions.⁴

In recent years, however, a small but growing number of disabled people have created a community both through informal interaction and through formal organizations, first within disability groups such as groups of blind persons or paraplegics and ultimately across disability lines. In the evolution of the disability community, exclusion came to play a positive role. Rather than being a source of negative self-images and a barrier to interaction, the common experience of exclusion became a catalyst for shared identity and a target for collective action. Following in the wake of the black power, feminist, and other social movements of the 1960s, which also stressed a positive self-image rooted in the collective identity of an excluded group demanding greater participation, increasing numbers of disabled people embraced activism and the creation of community. Other factors nurtured a social movement of disabled people by increasing their numbers, their independence, and their dissatisfaction with marginal social participation. These factors include:

- the development of medical technologies, including prosthetics, medications, and surgical techniques, that

- permit disabled people to live longer, survive injuries, and participate more fully in everyday life;
- the popularizing of an ideology of deinstitutionalization and normalization in mental health and other fields, which encouraged the growth of noninstitutional support systems and greater participation in community life;
 - the changing age structure and the increasing number of elderly people in American society, many of whom have physical disabilities or share service needs as well as an activist orientation with disabled persons;
 - the Vietnam war, which produced a large number of disabled veterans who were activists, and which also led to widespread protests that helped to legitimate social activism.

The development of a disability community was also encouraged by trends in public policy; as the community grew, it in turn affected those trends.

Public Policy Trends

Section 504 represented the convergence of two trends in public policy: one trend toward extending civil rights protections to groups excluded from full participation in American society and another toward broadening the scope of public programs benefiting disabled individuals.

In the 1970 United States Census, more than 9 percent of the adult population identified themselves as disabled.⁵ Despite their large numbers, the disabled population has not been particularly visible to most Americans nor has it generally exhibited the social cohesion or capacity for collective action of an organized community. The large numbers of disabled people in our society have not been visible, and consequently the nature of the real barriers they face has not been well understood. Dis-

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abled people generally have not spoken for themselves, and public policies have typically dealt with their needs in ways shaped by stereotypes of dependency.

Beginning in the 1960s, however, government officials and the general public have become increasingly aware of the barriers confronting disabled people, and this awareness has been expressed in public law. At the federal level, a number of major programs have been enacted in the past fifteen years:

- The Architectural Barriers Act of 1968 provides for the removal of architectural barriers from new federally-funded buildings. An interagency Architectural and Transportation Barriers Compliance Board was created in 1973 to ensure compliance with the act.
- A number of vocational and independent living services are available under the vocational rehabilitation program. Substantial expansions of the funding of vocational rehabilitation and related services were enacted in 1968, 1973, and 1978.
- A wide range of services is available to individuals with developmental disabilities⁶ under the provisions of the Developmental Disabilities Services and Facilities Construction Act of 1970, including day care, medical assistance, special employment and living arrangements, counseling, and recreation. The 1975 amendments to the act funded advocacy agencies to promote the rights of developmentally disabled people.
- Under Title XVI of the Social Security Act, enacted in 1972, direct cash payments are available to disabled people who have limited income and resources. Individuals who are eligible for this program, called Supplemental Security Income (SSI), have also been entitled to food stamps, medical assistance through Medicaid, and a range of social services.

- Since 1974, Project Head Start has been mandated to include disabled children as at least 10 percent of the children enrolled in each program.
- The Education for All Handicapped Children Act of 1974, Public Law 94-142, requires all public school systems to provide a free and appropriate public education and related services to children regardless of handicapping condition, in the least restrictive environment that is appropriate to the individuals.
- Section 504 of the Rehabilitation Act of 1973 declares that no recipient of federal funds may discriminate against any individual in the provision of services, regardless of handicap.

These programs, created or significantly expanded since 1968, were developed within the context of a growing movement among and on behalf of disabled people. To an unprecedented extent, disabled and able-bodied individuals, organizations within various disability groups, coalitions of those organizations, and associations representing service providers combined advocacy efforts to improve social opportunities for disabled people. Although an important objective for these advocacy organizations was increased funding for existing benefits and services, they were dissatisfied with established programs that had been justified by defining disabled individuals as incapable of taking care of themselves and thus in need of special services. Disabled people had been included among the so-called deserving poor—those society considered to be dependent through no fault of their own and therefore entitled to public assistance. Most programs perpetuated an image of disabled people as socially incomplete or damaged as a result of their physical or mental impairments. Seen as incapable of self-sufficiency, they were to be pitied, and stigmatized; both help and segregation were deemed appropriate.⁷

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Such views were deeply entrenched in American society. Frank Laski has written of the constraints placed on disabled people by laws that limit the options open to them. Laski, an attorney, has been associated with the Public Interest Law Center of Philadelphia (PILCOP) and was actively involved in litigation to establish the rights of disabled people. He writes that, until very recently, statutes

reflected common stereotypes of disabled persons as dependent and inferior. Laws characteristically excluded handicapped persons from services, benefits and protections provided, as a matter-of-course, to all persons. Specialized legislation enacted to protect the disabled was premised on notions of charity rather than entitlement and implemented so as to segregate the disabled and suffocate their ability to participate in society.⁸

Some of the disability legislation enacted since the late 1960s strengthened programs that incorporated this dependent image of disabled people. However, other laws mandated an end to the exclusion of disabled people from activities in which their participation had previously been discouraged or prohibited. A wide range of governmental services that had been available only to the able-bodied population was extended statutorily specifically to include disabled people. Advocates argued that disabled people should receive not special education at a special school, but supplemental services as part of a regular educational program in a regular classroom shared with able-bodied students; not sheltered workshops for the construction of handicrafts and the repair of discards, but participation in the mainstream labor market; not separate arrangements for transportation, recreation, and access to public facilities, but equal access to facilities and services used by the general public. By rejecting separate facilities, whether

equal or unequal, disability rights advocates rejected the association of disabled persons with the “deserving poor” and launched a civil rights movement demanding full integration into the mainstream of American life, a movement parallel to those demanding equal rights without regard to race, gender, or age.

Like activists in other civil rights movements, activists in the disability rights movement have argued that equal opportunity may require more than simply equal treatment but with a different rationale. Whereas the other movements have justified the need for compensatory efforts primarily as a transitional remedy for past wrongs, most disability rights advocates acknowledge that disabled persons require and will continue to require far more services than able-bodied persons to have truly equal access and equal opportunity. Several of the new federal disability programs, most notably the Education for All Handicapped Children Act and Section 504 of the Rehabilitation Act, provide for substantial compensatory measures. School systems were required to provide for the education of the most severely and profoundly handicapped, at a cost of millions of dollars nationwide. Equal access to transportation under Section 504 was interpreted to require full accessibility for all new public transit buses. Accommodations in the design of transit systems, federal buildings, education institutions, and a number of other facilities and services required tremendous efforts and the commitment of many billions of dollars.

That disabled people could secure such commitments in the fiscally conservative 1970s is surprising. The success of the disability rights movement and its role in the development of Section 504 cannot be explained by the numbers of participants or the degree of their frustration. The lore of social movements and political power offers only partial explanation.

Social Movements and Political Power

In social science the pluralist perspective is the dominant explanation for how interest groups influence public policy.⁹ The pluralist perspective explains political effectiveness by concentrating on the political clout of organized interest groups through the use of such resources as money, the mobilization of masses of people in elections or protests, and the dispensing of political favors through occupying strategic political or economic positions. Was an organized movement of disabled people instrumental in transforming federal disability policy? The social movement of disabled people appears atypical of groups that have effectively wielded power in recent American history; the successes of the disability rights movement have not been proportionate to its ability either to exchange favors or to disrupt. Although a sizable proportion of the population describes themselves as having a work-related disability, for most people such self-identification does not translate into group consciousness or political activity and disabled people have not constituted a subculture in our society beyond isolated institutional or community settings. Although disabled people are disproportionately poor, old, and nonwhite, they are geographically and socially dispersed.¹⁰ Severely impaired individuals, who are most likely to identify themselves as disabled, may face the greatest handicaps to effective public action. Those who are least impaired may choose to reject the disabled label altogether.

Further, disabled people lack many of the political and economic resources typically associated with political influence. As a group they have been unable to mobilize large numbers of people in elections or other collective political or economic activities. To the extent that disabled people do participate in American political and economic life, they typically do so as individuals and

often in peripheral positions. The attitudes and behavior of able-bodied people may serve to discourage or explicitly block efforts to attain positions of power. In short, disabled people apparently lack the ability to force institutional change.

An alternative explanation of recent legislation benefiting disabled people characterizes the new mandates as a logical extension of a pattern of expanding entitlements and services provided by the federal government, based on broadly held social and political values—what Daniel Bell has called the Revolution of Rising Entitlements.¹¹ Civil rights for disabled people could be portrayed as a logical outgrowth of prohibitions to discrimination on the basis of race, ethnicity, sex, and age written into federal legislation and judicial rulings in the last quarter-century. Furthermore, given the periodic expansion of services to disabled people, ensuring equal access to services funded by the federal government in Section 504 would be consistent with the federal government's initiatives in providing opportunities to groups excluded from full social participation.

By emphasizing its continuity with earlier efforts, this cultural/historical approach may help to explain why the cause of civil rights for disabled people was acceptable both in government and among the general public; it cannot, however, explain why the issue was raised at a particular time and place and in a particular way. It cannot explain why these demands were given legitimacy by a government agency in a conservative administration when the very concept of affirmative action programs was increasingly under fire or how effective political action overcomes political conservatism and bureaucratic inertia.

The story of Section 504's institutionalization as a meaningful civil rights protection is complex, involving many individuals and organizations engaged in formal and informal processes. This book traces the stages in

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Section 504's evolution—from its origins in legislative proposals to the Rehabilitation Act's passage, to the development of its regulations, through its implementation history. It focuses on a government making policy as well as on a growing community and its struggle for power. It is an attempt to describe and explain a process of policy development in relation to its organizational, political, and historical contexts. The case of Section 504 suggests how symbols, along with a number of organizational and structural factors, can play an important role in public policy. Examining the interplay of these factors may provide a better understanding of how specific policy decisions relate to the broader social forces surrounding them.