

The First “A” in the ADA: And 25 More “A”s Toward Equality for Americans With Disabilities

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Abstract

This article, based on my remarks at the 2015 tenBroek Symposium panel on “The Future of Disability,” focuses on the first “A” in the Americans with Disabilities Act (ADA). That first “A” in the ADA’s law and policy framework is to apply to *all* qualified individuals with disabilities residing, working, recreating, using the web, and engaged in daily life activities with private and public organizations in the United States.

Key Words: *Americans with Disabilities Act; advocacy; inclusion; economic empowerment*

This article, based on my remarks at the 2015 tenBroek Symposium on “The Future of Disability” (Blanck, 2015a), focuses on the first “A” in the Americans with Disabilities Act (ADA). That first “A” in the ADA’s law and policy framework is to apply to *all* qualified individuals with disabilities residing, working, recreating, using the web, and engaged in daily life activities with private and public organizations in the United States (Americans with Disabilities Act of 1990, ADA Amendments Act of 2008; Blanck, 2014; Schur, Kruse, & Blanck, 2013; U.S. Equal Employment Opportunity Commission, 2008).

The purpose of this special issue of *Inclusion*, and of the 2015 tenBroek Symposium, was to celebrate and take stock of the past 25 years of the ADA, and to reflect upon and consider the coming 25 years. Certainly, during the last 25 years, there have been dramatic changes in the perceptions of disability, from primarily viewing it as a medical state to be cured and pitied towards acceptance of disability as an element of the human experience and self-identity. The ADA’s modern understanding of disability is as much shaped by diversity in biology, culture, and self-identity over the life course, as it is by the barriers to inclusion built and still maintained in society. The ADA endorses this paradigm shift from the prior and dominating medical model to a social and environmental approach to disability civil and human rights.

My emphasis on the first “A” in the ADA, as said, allows for focus on the individual and the uniquely human lived social experience. I use the first “A” in the ADA as my starting point to consider 25 other such “A”s, which are important to understanding the past and useful for framing future action. In the body of this article, the numbering of these “A”s is bold bracketed coinciding with the associated italicized text.

I already have provided my first two “A”s; that is, *Americans* [1] as broadly conceived for purposes of the Act that affects *all* [2] of us, those with visible and nonvisible disabilities, older adults who may experience disability as part of the aging process, members of the *Armed Forces* [3] and veterans who have experienced post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI) as signature injuries of recent wars, and the family members, friends, and supporters of these individuals as partners in daily living.

Arithmetic [4] (Demographics)

It is estimated that by the year 2100, the world’s population will rise to more than 10 billion people, up from the approximately 7.3 billion people today (Current World Population, 2015; Live Science, 2015; United Nations, 2011). By that time, the majority of individuals will live in *Asia* [5] and *Africa* [6], and in developing countries, with a predicted rise in poverty

throughout the world (Pew Research Center, 2014). An estimated 1 billion people or 15% of the present world population presently live with disabilities, comprising the world's largest minority, and that number is expected to rise with medical and technological advances (United Nations, 2015). The *ageing* [7] process will further add to a rise in individuals living with disabilities in the coming decades. Individuals are living longer (Pew Research Center, 2014). The United States is expected to have among the most significant relative increases in population in the coming decades, with the populations of Japan, South Korea, Russia, and Germany declining (Pew Research Center, 2014). The population of Africa is projected to increase faster than other areas of the world and will constitute a larger share of the global population (Pew Research Center, 2014).

The implications of these demographic shifts are pronounced for individuals with disabilities. For example, older individuals will spend more time living with disabilities, and they may require greater resources to support their ageing dependents with disabilities (United Nations, 2015). More people in developing countries and regions such as Africa will have disabilities; and many will live in poverty, have lower educational attainment, and experience multiple forms of discrimination on the basis of disability, gender, race, and ethnicity. The United Nations Convention on the Rights of Persons with Disabilities (CRPD, 2008) increasingly is relied on to address issues of legal capacity (Article 12) for individuals with cognitive impairments across the life span and particularly coinciding with the ageing process (Blanck & Martinis, 2015).

The rising global population will include greater numbers of people who have *autism* [8], and print and learning disabilities such as *Attention-Deficit Hyperactivity Disorder (ADHD)* [9] and *Attention-Deficit Disorder (ADD)* [10]. Absent dramatic changes, these individuals and others with cognitive disabilities will continue to face stigma and high levels of discrimination in employment and other activities central to daily life.

***Abode* [11] (Choosing Where to Live)**

In the United States, the ADA's "integration mandate" was affirmed by the Supreme Court in the seminal case *Olmstead v L.C.* (1999). Like its inspiring predecessor in the area of race and

equal education *Brown v. Board of Education* (1954), the *Olmstead* decision declared that state-sponsored separate and nonintegrated living arrangements were discriminatory toward people with disabilities. *Olmstead* involved the equal right of individuals with cognitive disabilities to live in the community, as opposed to being segregated in institutions. The decision reflects the paradigm shift in disability rights from acceptance of life in segregated institutions and nursing homes to the right to integrated community living (McDonald, Williamson, Weiss, Adya, & Blanck, 2015).

Olmstead also rejects the blanket presumption that children with disabilities learning in separate "special" classes equates to a mainstream education, as it does that "employment" in segregated sheltered workplaces is equivalent to the opportunity for integrated competitive work at a living wage. In short, as the Supreme Court stated, under the ADA, "unjustified isolation . . . is properly regarded as discrimination based on disability" (*Olmstead*; Blanck, Waterstone, Myhill, & Siegal, 2014).

Nonetheless, in 2015, prominent ethicists argued that in the United States we should "Bring Back the *Asylum*" [12] because in many ways deinstitutionalization for persons with mental disabilities has turned into transinstitutionalization toward nursing homes, general hospitals, prisons, and homelessness (Sisti, Segal, & Emanuel, 2015). As a former court officer overseeing class action litigation in deinstitutionalization and community service development cases for individuals with intellectual disabilities (*Weston v. Wyoming State Training School*, 1994) and individuals with serious and persistent mental illness (*Chris S. et al. v. Jim Geringer et al.*, 1994), I attest to the fact that the ADA's *Olmstead* mandate has changed lives for the better, particularly when appropriate community supports are available. By its purpose, the slippery slope of institutionalization inevitably leads to less opportunity for individual growth, rehabilitation, recovery, and flourishing, as documented by the lived experience and empirical study.

***Avocation* [13] (Employment and Economic Self-Sufficiency for *Autonomy*) [14]**

The Achieving a Better Life Experience (ABLE) Act was overwhelmingly approved with bipartisan sup-

port by Congress and signed into law by President Obama on December 19, 2014 (*ABLE Act of 2014*) [15]. ABLE amends Section 529 of the Internal Revenue Code to allow use of tax-free savings accounts for eligible individuals with disabilities. But ABLE is more than the establishment of tax-free savings accounts because it represents one of the most significant pieces of legislation since passage of ADA (Morris, Rodriguez, & Blanck, 2015). ABLE opens new pathways toward independence and economic self-sufficiency for individuals with disabilities (Blanck, 2015b). ABLE offers opportunities for individuals with disabilities to lead self-determined and self-directed lives by setting financial savings goals, and having friends and family contribute resources to their future.

The need to spur employment and economic self-sufficiency for people with disabilities is apparent because, 25 years after ADA passage, there has been little change in the employment and economic status for working age adults with disabilities. The poverty rate of people with disabilities in the United States is more than double the rate of people without disabilities. These disparities are compounded by higher costs associated with living with a disability, which further associate with fewer and lower quality-of-life choices for community participation and where to live, and for access to transportation and healthcare. The *Affordable Health Care Act of 2010* (Patient Protection and Affordable Care Act, 2010) [16] was “to increase the number of Americans covered by health insurance and decrease the cost of health care” (*National Federation of Independent Business et al., v. Sebelius*, at 2580, 2014). That law survives, as the result of recent U.S. Supreme Court decisions, along with its goal of Medicaid expansion for individuals with disabilities and those living in poverty to obtain medical care.

For many people with disabilities to attain, maintain, and advance in employment and economic self-sufficiency, Internet technology also must be *accessible* [17] and usable. My recent book, *eQuality: The Struggle for Web Accessibility by Persons with Cognitive Disabilities* (Blanck, 2014), examined the right under the ADA to full and equal web access for people with cognitive and other disabilities in employment, education, and other areas central to self-advancement. Given the ubiquity of online activity in the United States and most of the world, as well as the shifting of nearly all daily interactions and activities to the Internet, the right

under the ADA and other laws to web equality may seem obvious (Blanck, in press).

Nonetheless, establishing the rights of individuals with disabilities, and in particular of individuals with cognitive disabilities—intellectual and developmental disabilities, autism, traumatic brain injury, learning disabilities, and other conditions—has seldom come without legal and political struggle, which also is necessary to achieve a broader shift in attitudes and practice (Blanck & Marti, 1997). *Web eQuality*, grounded in ADA law and policy, is necessary for people with disabilities to fully partake and flourish in the information age over the life course (Blanck & Martinis, 2015; Putnam, 2014).

Workplace *accommodations* [18], such as *assistive technologies* [19] and those for the physical world as mandated by the ADA Accessibility Guidelines (*U.S. Access Board, ADA Accessibility Guidelines, ADAAG*, 2002) [20], likewise are crucial in efforts to recruit and retain employees with disabilities (Ekberg et al., in press; Schur et al., 2014). In a series of studies, my colleagues and I have examined the provision of workplace accommodations, and the often-unfounded employers’ concerns over potential accommodation costs. In 2014, we published the first study to systematically examine workplace accommodations from multiple perspectives—those of employees, coworkers, and managers—and to compare accommodation requests, costs, and benefits between employees with and without disabilities. This study reported on accommodations requested and granted from intensive case studies of eight companies, based on more than 5,000 employee and manager surveys, and interviews and focus groups with 128 managers and employees with disabilities.

Consistent with prior research findings, we found that people with disabilities are more likely than those without disabilities to request accommodations, but the types of accommodations requested, and the reported costs and benefits, are similar for disability and nondisability accommodations. Fears of high accommodation costs and negative reactions of coworkers were not realized. Indeed, the granting of accommodations had positive spillover effects on the attitudes of coworkers, as well as a positive effect on the attitudes of requesting employees, particularly when coworkers were supportive. The results point to the benefits from a corporate culture of inclusiveness, flexibility, and attention to the individualized needs of all employees.

Future research is needed, across a variety of large and small work settings, to shed light on the benefits of workplace accommodations, their effects on organizational culture and employee and employer needs, and how they increase equal employment opportunities for individuals with disabilities. More study also remains to be learned about individual managerial *attitudes* [21], styles, and leadership qualities that create and maintain workplace climates that maximize productivity and engagement, especially for employees with cognitive disabilities.

Advocacy [22] (Voice to Action) [23]

Continued advocacy by people with disabilities, and their families and supporters, to advance full and equal participation in the world is the foremost means to change attitudes and behavior, and eventually to advance cultural norms (Blanck, 2015b). The ADA is but one piece of a larger and progressive policy framework of the political, economic and social ecosystem needed to eliminate disability discrimination in educational, employment, health care, housing, governmental support programs, and in access to the built and digital environments. Changes in law and policy have been achieved incrementally and through the cumulative effects of advocacy, where discrimination is challenged and brought to the fore. Yet, litigating disability rights has resulted in advances but also retrenchment.

Nonetheless, to imagine the world without an ADA, is to envision continued segregation, where human separation on the basis of functional difference alone is accepted. In this “It’s a Wonderful Life” scenario, from the name of the classic film in which Clarence Odbody, AS2 (*Angel* Second Class) [24] helps George Bailey see what his world in Bedford Falls would have been if like he was never born and had become the town of Pottersville (The Internet Movie Database [abbreviated IMDb], 2015), disabled people and their families are unable to participate fully and have a community voice. There would be little tolerance for individual difference and accommodation of dissimilarity. Fundamental human liberties take on a skewed meaning, with equal participation only for some.

Unfortunately, the community of people with disabilities, and their families and supporters, know what it is like to live in Pottersville, the

imagined city named after the villain in the film, Mr. Potter, a slumlord, who also uses a wheelchair. In the ADA and the United Nations Convention on the Rights of Persons with Disabilities, however, as former U.S. Attorney General Dick Thornburgh has said, “The world community has taken an important—and long overdue—step toward bringing people with disabilities all over the world into the mainstream of the human rights” (Thornburgh, 2012).

Like General Thornburgh and many others in the disability community, I am optimistic, but vigilant and determined, about the future and the next 25 “A”s to come. And so, for the 25th “A,” it is fitting that I turn back to *Abraham* Lincoln [25], for those immortal words he spoke at his first inaugural address on March 4 in 1861, 154 years ago, about moral determination, yet compassion for individual and collective rights. Lincoln (1861) spoke of us all:

We are not enemies, but friends, and we must not be enemies. Though passion may have strained, it must not break our bonds of affection, the mystic cords of memory will swell, as surely they will be touched by the better angels of our nature.

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