

## **Book Review**

**Title:** *The Disability Pendulum: The First Decade of the Americans with Disabilities Act*

**Author:** Ruth Colker

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**Reviewer:** Katharina Heyer

Fifteen years ago a bipartisan Congress passed the Americans with Disabilities Act (ADA), the nation's premier law affecting the lives of millions of Americans with disabilities. The ADA firmly lodges disability into a civil rights paradigm and offers comprehensive protection against a wide variety of disability-based discrimination. It is only fitting that one of the nation's premier scholars of the ADA, law professor Ruth Colker, has now written a comprehensive – and accessible – analysis of the statute.

Colker reminds us of the high hopes fueling the passage of the law: "as a package, the ADA contains marvelous language. It provides comprehensive protection from the moment one is born or becomes a person with a disability and might need access to public services to the time when one might enter the workforce or seek to use a forum for public entertainment" (p. 21). During the first decade of the ADA's treatment in the courts, however, these high hopes have given way to what many observers have termed a backlash. Colker was one of the first to document the ways that the ADA has been interpreted narrowly in the courts, resulting in overwhelmingly pro-defendant outcomes, primarily in employment discrimination cases. In *The Disability Pendulum*, Colker expands her empirical study to the ADA's three main titles: employment, public services, and privately owned public accommodations. She carefully explains the reasons for the judicial hostility towards enforcing the Act and offers insightful and practical suggestions on how and where to amend the Act to ensure that the true Congressional intent is reflected in the ADA's enforcement.

This book will find a wide readership in graduate and undergraduate courses that examine disability as a legal, political, or social issue. It carefully illustrates the landmark cases litigated under each of the three titles, allowing readers not trained in disability law to understand both the legal principles as well as the powerful personal stories at work in these cases. Colker then expands her analysis to larger constitutional issues regarding the relationship of an increasingly conservative Supreme Court, Congress, and the States. Finally, Colker offers the first comprehensive legislative history of the ADA's enactment, illustrating how, among others, homophobia and powerful business interests led to a "fragile compromise."

In the end, the image of a backlash is simplistic. The ADA continues to have a "transformative effect on American life," (p. 21) and as such has served as a model of disability rights legislation for the rest of the world. While the first decade of the ADA's enforcement may have been disappointing, Colker's book tells the story of a "swinging pendulum" (p. xiv) in which broad pro-defendant decisions are followed by occasional, albeit much narrower, victories

for plaintiffs. It is now time for the pendulum to swing back to the center.

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Fresh water supplies are decreasing globally and agriculture consumes more than 93% of the available water for irrigation. Additionally, gaseous emissions have been predicted to raise global temperatures by as much as 10°C in the next 100 years, with the potential for drastic effects on agricultural production. Even if innovative renewable energy technologies are developed; the losses of productive soils retarded; biological alternatives to energy-based chemicals discovered; new sources of fresh water found; and climatic changes slowed; the world population cannot continue to increase at its c ADA also gives people with disabilities the right to shop where they please, stay in whatever hotel they choose, and patronize any establishment open to the public; the right to use public transportation; and many other rights. Because finding and keeping a job is the topic of this book, this section will focus on the employment provisions of the law (Title 1). In an adversarial situation, proving that you are covered by the Americans with Disabilities Act is the first, and sometimes hardest, step to obtaining your rights. Because of the widespread belief that learning disabilities, attention deficit disorder, and dyslexia are not severe, it is possible that an employer will try to claim that you do not have a disability. Review. "Mezey's book offers all those in disability studies, law, and public law a thorough, thought-provoking, and comprehensive understanding of the entire Americans with Disabilities Act, which is arguably one of the most important laws passed since the Great Society." —Ruth O'Brien, author of *Crippled Justice: The History of Modern Disability Policy* and editor of *Voices from the Edge: Narratives about the Americans with Disabilities Act*. From the Back Cover. the Edge: Narratives about the Americans with Disabilities Act. About the Author. Susan Gluck Mezey, Ph.D., J.D., is a professor of political science at Loyola University, Chicago. She is former director of Loyola's Women's Studies Program and chair of the 1999 Forum on the Child.