

Employment and Policy for Persons with Disabilities in the U.S. and Japan  
A Roundtable Discussion October 9, 2012  
Talking Points: John L. Wodatch

1. Disability Rights Policy in the U.S.: A brief history (米国障害者権利政策:概要)

History of discrimination and segregation in the US.(障害者差別における歴史)

1. Federal and State laws segregated and isolated persons with disabilities
2. Famous Supreme Court case that allowed the sterilization of persons with severe intellectual disabilities (Buck v. Bell)
3. Families with members with disability felt shame; persons with disabilities were stigmatized and stereotyped
4. Our society used what we now call the “charity” model
5. Not a part of our history of which we are proud, but it does lay the groundwork for the significant changes of the late 20<sup>th</sup> century
6. Not a totally bleak picture: also a history of government programs that provided for educational services (schools for the deaf and for the blind), for vocational training programs, and for affirmative action programs to employ persons with disabilities.

Recent history(近年状況)

1. Starting in the 1940’ s ferment in the United States, persons seeking equal rights for racial minorities and women
2. Successful strategies and approaches that resulted in series of Federal laws, including the Civil Rights Act of 1964, that have remade modern American society
3. Persons with disabilities and their organizations and champions used the strategies and approaches of these movements, including use of the media to explain their situation, demonstrations from marches to sit-ins, and the passage of Federal laws to bring about societal change
4. This movement was fueled by and organized by persons with disabilities themselves and their organizations
5. Political support for this movement was bi-partisan; not the sole province of either of the U.S. dominant political parties: President George H.W. Bush, a Republican, signed the ADA, and Sen. Edward Kennedy, a Democrat, was a key sponsor of the ADA
6. Result was a series of Federal civil rights laws, including the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990

Ten Key Principles of an Effective Disability Rights Law(障害者権利法効果における10の主要原則)

1. Extensive coverage of persons with disabilities through a comprehensive definition of disability
2. Comprehensive coverage of all aspects of society: The goal should be to open up all aspects of daily life for persons with disabilities, including covering: (社会のあらゆる面でのバリアフリー化を)
  - a. Public and private sectors
  - b. The built environment (both new and existing)
  - c. Education
  - d. Employment
  - e. Transportation
  - f. Telecommunications and access to information
  - g. Housing
  - h. Community and independent living
  - i. Access to courts and the judicial system
  - j. Access to basic civic rights and responsibilities, including voting
  - k. Recreation and leisure activities
3. Prohibiting the exclusion and different treatment of persons with disabilities (障害者排除。特別扱いの廃止)
  - a. Concept of equality of opportunity and nondiscrimination
  - b. Example: Cannot exclude persons with Tourette Syndrome from a supermarket because of their tics; cannot exclude persons with cerebral palsy from zoo because of their appearance
4. Including the obligation to take positive steps as a form of nondiscrimination (無差別社会への一歩への義務)
  - a. Notion that the failure to take positive action to treat dissimilarly situated persons is itself a form of discrimination
  - b. Examples: Reasonable accommodation in employment, building a facility with only steps, teaching a class that includes students who are deaf or are blind without providing appropriate aids (sign language interpreters and materials in Braille or on audiotape)
5. Integration (学校教育でのメインストリーム)
  - a. The key to ending segregation and isolation of persons with disabilities in society
  - b. Integration will break down attitudinal barriers that fuel segregation and discrimination
  - c. In the U.S. the role of integrating students with disabilities in elementary and secondary education classes cannot be underestimated; we have educated two generations of children in the U.S. who now see mainstreaming as the norm and have groups of

friends that include kids with and without disabilities as a usual occurrence

6. Cost limitations

(コスト制限)

- a. Law needs to strike a balance between the rights of persons with disabilities and the costs accrued in providing accommodations (in those situations where costs are significant or consequential)
- b. U.S. law recognizes cost limitations for entities that bear costs of providing accommodations and changes, including undue burdens or undue hardship (whether employment or the provision of services)
- c. Also need to develop an administrative defense for situations of impossibility: in U.S. the concepts of fundamental alteration of a program or activity and not hiring unqualified persons in the employment context

7. Enforcement

(法の施行)

- a. If a disability rights law is to be effective, it must have a practical and effective enforcement regime; otherwise it is just a policy statement and will not produce the changes in society that will end discriminatory practices
- b. U.S. approach is two-fold: persons with disabilities can, on their own, enforce the law by lawsuits and the government itself is charged with receiving complaints of discrimination and bringing about change.

8. Mix of general and specific requirements

(一般義務・特別義務の混合)

- a. General statements of nondiscrimination are essential to convey broad coverage, but must be supplemented by a list of particular requirements
- b. Necessary to give covered entities a fuller understanding of their obligations and to give persons with disabilities knowledge of their rights
- c. Example: Statement that reasonable accommodation is required in employment together with examples of types of accommodations that might be required

9. Government programmatic support

(政府における計画支援)

- a. A program of government grants to help pay covered entities for certain, identified accommodations, or to fund an information and technical assistance campaign (information about how to comply or training for covered entities or persons with disabilities), or a series of

tax credits for businesses who seek to comply is an essential complement to the nondiscrimination law itself

- b. Societal change is difficult and broad-based support, whether financial or technical, from the government will demonstrate support for the nondiscrimination law and ease and strengthen compliance efforts
- c. Will help foster an environment where voluntary compliance can be achieved and thus decrease reliance on formal enforcement actions

#### 10. Role of persons with disabilities

(障害者の役割)

- a. I have saved the most important aspect for last: Persons with disabilities should be involved in all aspects of the law and in all decision-making
- b. Persons with disabilities are important resources for information about what is important in their lives and what works best at a practical level – in the U.S. persons with disabilities have had the most concrete, helpful, cost-saving information on how to achieve compliance
- c. Essential when establishing a law seeking to create independence, dignity, and empowerment for persons with disabilities

#### 2. Employment(雇用)

- A. Let's focus briefly on employment. It is essential that national legislation include provisions that require nondiscrimination in employment. And it is equally important that this concept of nondiscrimination include the requirement of reasonable accommodation.
- B. Reasonable accommodation is any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions
- C. Examples of reasonable accommodation include making existing facilities used by employees readily accessible to and usable by an individual with a disability; restructuring a job; modifying work schedules; acquiring or modifying equipment; providing qualified readers or interpreters; or appropriately modifying examinations, training, or other programs.
- D. Underlying inclusion of these principles is a key concept: persons with disabilities are capable of performing any job for which they are trained and have qualifications. Disability rights laws are about exploding stereotypes. The time has past when we look at a person with a disability and only think what a person can't do. Persons with disabilities in the U.S., here in Japan, and across the

world have shown that, with proper training, reasonable accommodation, and a chance, they can perform the most difficult and technically demanding jobs.

3. Takeaways from our discussion (この討論会のまとめ)

- A. I have spoken today about the U.S. experience with disability rights. While it is true that the ADA grew out of the American historical experience and reflects the U.S. legal culture of dealing with discrimination through strong Federal legislation and does embody American ideals on the rights of the individual, much of the U.S. experience is relevant for the people of Japan.
- B. In fact, the basic tenets of the Convention on the Rights of Persons with Disabilities, the UN treaty now ratified by 124 countries across the world, are the same principles that form the basis of the ADA: equality of opportunity, nondiscrimination, dignity and respect for persons with disabilities, empowerment, and independence. And both the ADA and the CRPD lay out the parameters of disability rights legislation.
- C. But I am not suggesting that Japan merely graft American choices into Japanese law. You should look to the principles of the ADA and the CRPD and find the appropriate cultural mechanism in Japan to advance the rights of persons with disabilities. In the U.S. persons with disabilities used the media and tactics of confrontation to establish their presence, and announce their goals and wishes. Your task is to find the equivalent forums and techniques, consonant with your own traditions, to advance the cause of equal opportunity for persons with disabilities.
- D. What is important is that persons with disabilities themselves take the lead in advancing disability rights. I realize this is not an easy task. It is a truism that people fear the new and the different. For persons with disabilities, this often means that others often fear to meet or interact with you. It may just be that you are avoided because people are afraid they will say or do the wrong thing and embarrass you and themselves. This is as natural as it is temporary.
- E. You have already started to break down the attitudinal and psychological barriers that have caused isolation and led to discrimination. As both of our countries work on the process of ratifying the UN Disabilities Treaty, we can work together. Our governments and people with disabilities and their organizations in Japan and the United States can share our experiences, our successes, and learn from our failures. We must continue the dialogue that we have engaged in today. We have much to learn from each other. But, more importantly, working together will provide the necessary support for us each to accomplish our jointly held goal: to open up everyday life, in the U.S. and in Japan, for persons with disabilities and to provide a society where persons with disabilities are empowered to make their own choices and achieve their own dreams.

