

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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