White Paper

Summary of Proceedings at Loyola Law School, Disability Policy in Japan and the United States.
I. **Introduction**

Disability rights and disability welfare are a global concern, in many ways transcending race, gender, nationality, and culture. Persons with disabilities worldwide face challenges such as poverty and discrimination. In recognition of their plight, the United Nations has adopted the Convention on the Rights of Persons with Disabilities (CRPD).¹

Although individual nations may adopt their own disability policies, international dialogue on disability rights is essential for full compliance with the CRPD. Through this cross-cultural dialogue, nations can better evaluate the successes and limitations of their disability policies, as well as learn from other nations in developing more comprehensive and effective disability policies for the future. To this end, “Disability Policy in Japan and the United States” aimed to bring together disability scholars, advocates, and policymakers from these countries for a two-day roundtable conference, hosted by Loyola Law School in Los Angeles, California. Following this conference, a second, similar conference will take place in Tokyo, Japan at Waseda University. The Japan Foundation Center for Global Partnership and Loyola Law School have generously provided support for this conference. The purpose of this White Paper is to summarize the proceedings.

II. **Question One**

The panelists began the discussion with Question One: “What are the biggest policy and/or legal challenges to increasing the employment of people with disabilities in the United States and Japan?” The American panelists noted in particular the need in the United States for a

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more expansive definition of disability and for better assistance with transitioning persons with disabilities into the workforce. The Japanese panelists similarly stressed the need to expand the narrow definition of disability under Japanese law. And although the disability quota system in Japan has increased the employment of persons with disabilities, Japanese employers need to increase their compliance with statutory hiring mandates.

A. **United States**

A number of policy and legal challenges face the employment of persons with disabilities in the United States.

From a policy standpoint, several themes emerged. First was the definition of disability. While the Americans with Disabilities Act’s (ADA) definition of disability is more expansive than the Japanese definition, many categories of disabled persons still face special challenges.² These include individuals with disabilities related to poverty or trauma, and those individuals with psychiatric and cognitive disabilities, who continue to face prejudice in the workplace. Also at issue is the definition of disability in the public benefits system, in which some individuals must be too disabled to work as in order to receive state benefits, yet others may lose benefit assistance because they instead choose to enter the workforce.

Another policy theme that emerged was how best to facilitate transition for persons with disabilities. This notion of transition encompasses transition into the workplace, as well as transition for persons with disabilities out of foster care and special education. The United States needs to develop comprehensive polices that will aid these various transitions.

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² The ADA defines “disability” as: (1) a physical or mental impairment that substantially limits one or more major life activities; or (2) a record of a physical or mental impairment that substantially limited a major life activity; or (3) when a covered entity takes an action prohibited by the ADA because of an actual or perceived impairment that is not both transitory and minor. 42 U.S.C. § 12102(1); 29 C.F.R. § 1630.2(g)(1).
Employment plays a central role to persons with disabilities. As one participant stated, “employment is the yardstick by which Americans value people. If you’re not an employee, you’re a second class citizen.” Thus, U.S. policy must reduce barriers to employment for persons with disabilities in order to advance their civil rights. President Obama has issued an executive order that the federal government must serve as a “model employer,” but much work remains to be done before that reaching that goal. While disability advocates tend to focus on larger employers, the small business community is growing faster, and policy should focus on small businesses to encourage them to employ persons with disabilities. In doing so, the United States can look to less developed countries, where small business are doing better at hiring persons with disabilities.

Another important policy goal is education and raising awareness about disability and disability rights. More education is needed to change long-standing prejudice toward disability, to help persons with disabilities understand their legal rights and remedies, and to encourage employers to help transition persons with disabilities into the workforce.

Finally, disability rights also intersect with ethnicity and gender. For example, the incidence of disability is higher in the Latino population, and women remain less educated and less pushed to excel than are men.

In the legal realm, although the ADA has proven tremendously influential in promulgating a rights-based approach, much work remains. American laws must continue to reduce barriers to employment by reworking definitions of disability so that cases are no longer thrown out before they are heard on their merits. In addition, the American judiciary needs to be more receptive to disability rights as a civil right. Congress recognized the courts’ reluctance to

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promote disability rights and amended the ADA in 2008, but it remains to be seen whether those amendments will be effective in the long run.⁵

Among U.S. disability advocates, there has been a lack of unity on how best to address disability issues. To continue their efforts at helping persons with disabilities, disability advocacy groups need to present a united front, or at the very least support each other’s efforts. Such mutual support helped the ADA get passed in the first place, and such unity is especially needed now.

Underlying all of the above challenges are what were defined as “structural challenges.” The recent global recession had a dramatic effect in the United States on the employment of persons with disabilities. While unemployment among the general population soared, persons with disabilities were hit hardest, exacerbating their already difficult economic challenges. Without an economic recovery, persons with disabilities will have little chance for upward mobility.

In addition, the aging of the U.S. population presents another structural challenge, adding to the number of individuals who may need accommodation in their place of employment and who will increasingly depend on Social Security Disability Insurance. The Affordable Care Act may help ameliorate some of this effect, but it remains to be seen whether this will be the case.⁶

Technology is another major structural challenge facing persons with disabilities. Currently, assistive technologies lag far behind new technologies, especially web-based technology. Although some innovators are beginning to work with disability advocates so that new technology is accessible out of the box, more outreach is required before the majority of

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technology is designed with disability in mind. Technology is especially critical to employment: if persons with disabilities lack access to technology, they risk falling behind other employees, being poorly evaluated, and thus losing their jobs.

B. Japan

Challenges also face Japanese policymakers in addressing employment of persons with disabilities.

In Japan, the employment rate of persons with disabilities in open employment remains quite low, and wages for employees with disabilities are much lower than wages for those without disabilities. Societal constraints also marginalize Japanese employees. Japanese disability employment policy remains based on a strict application of the medical model of disability.7 This Japanese reliance on the medical model limits the number of disabled persons covered, making the ratio of disabled persons to the general population lower than in other developed countries.8 Japanese employment policy further focuses primarily on persons with severe physical disability, and less on persons with cognitive, psychiatric, and developmental disabilities.9 In addition, Japanese policy is not well organized to guarantee income for persons

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8 Heyer, RIGHTS ENABLED, supra note 7, at 174.
9 Id.
with disabilities.10 Finally, Japanese policy does not focus primarily on a rights-based model of disability and equal treatment by employers.11

The narrow definition of disability in Japanese policy and law presents challenges for persons with disabilities. Japanese law defines three categories of disability: physical, intellectual, and mental disability.12 First, physical disabilities are defined by a detailed list of impairments, which are categorized into six degrees according to severity.13 Second, intellectual disabilities are categorized into two categories of “severe” and “not severe.” Complicating matters for intellectual disabilities, each prefecture decides its own definition of intellectual disability, and the resulting criteria are not necessarily equal. Third, mental disabilities include those with psychiatric disorders and those who suffer from chemical dependency.

Any individual who qualifies as disabled under the above three categories receives a “handbook,” which authorizes the individual to receive public benefits.14 Without the handbook, a disabled person in Japan generally cannot receive any services. Although the Japanese government recently expanded the definition of disability to include HIV, the definition remains

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10 See Minimum Wage Act, Law No. 137 of April 15, 1959 (Japan), available at http://www.jil.go.jp/english/laborinfo/library/documents/lj_law14.pdf. Under Article 7 of the Minimum Wage Act, employers who obtain prior government approval may pay less than the statutory minimum wage to “workers having an extremely small capacity for work due to a mental or physical disability.”


12 Fundamental Act, supra note 7, art. 2.


14 Heyer, RIGHTS ENABLED, supra note 7, at 174.
Part of the reason for this narrow definition is the cost of the welfare system in Japan. Because of the potential increase in costs, the Japanese government has been unwilling to expand the definition of disability.

Japanese law requires employers to hire a certain percentage of disabled persons as part of their overall workforce. These laws address only those with physical or intellectual disabilities who have a Disabilities Certificate. However, an employer may get credit for hiring an employee with a mental disability if that individual holds a Disabilities Certificate. The government sets the quota rate and reviews it every five years. If an employer fails to meet the required quota, the company faces public disclosure and embarrassment. Large companies that fail to meet the employment quota face payment of a levy. Proceeds from the levy are then redistributed to companies who want to accommodate employees with disabilities, or companies who exceed their hiring quota. Payment of the levy, however, does not exempt these companies from their hiring obligations.

Legal challenges also face the employment of persons with disabilities in Japan. First, workplaces for persons with disabilities are divided into open employment and sheltered workshops. Open employment is regular employment with a company on a contractual basis where employees are paid wages and protected by labor law protections. In a sheltered workshop, on the other hand, employees are treated as trainees and paid merely the cost of labor, and are not protected by labor law. In 2005, the Japanese government passed a law that aimed to

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15 Id.
17 Heyer, From Special Needs, supra note 7, at 14.
train sheltered workshop workers to work in open employment on a contractual basis.\textsuperscript{18}

However, under this act, if a person with a disability worked in a sheltered workshop, he or she pays a fee as a welfare service user. In some instances, this fee is higher than his or her cost of labor. Second, persons with minimal vocational ability because of physical or mental disability are not covered by the Minimum Wage Act, and thus have no guaranteed minimum wage based on their vocational ability.

III. Question Two

Question Two was “What are policy tools and/or legal strategies which have proven effective in your country?” In the United States, federal, state, and private sector initiatives have achieved notable successes in increasing employment of persons with disabilities. Similarly, American disability advocates continue to litigate ground-breaking cases, helping to ensure ADA compliance among employers nationwide. In Japan, the quota system and the special subsidiary system has notably increased the employment of persons with disabilities, and recent legislation has helped supplement wages for employees with disabilities, which have traditionally been lower than average.

A. United States

Several policy tools and legal strategies that have proven effective in the United States in helping advance the employment of persons with disabilities.

1. Government sector successes

A number of federal and state government-led initiatives have successfully promoted disability rights. One of the initiatives at the federal level is the Department of Labor’s Office of

\textsuperscript{18} See Services and Supports for Persons with Disabilities Act, supra note 13, art. 5, § 14.
Disability Employment Policy (ODEP). The ODEP was conceived of so that the disability community felt that had a voice in the Labor Department. The ODEP has many goals, among which are: (1) to increase employer and public expectations that persons with disabilities can contribute to the workplace; and (2) to promote success stories of persons with disabilities entering the workforce. In addition, the ODEP implements memoranda of understanding with federal agencies on flexible workplace issues, to increase access for persons with disabilities working for the federal government. The ODEP also hopes to work with multiple agencies on transitioning persons with disabilities into the workplace and on developing strategies for assistive technologies. In this manner, technology developers will be on board from the outset so that assistive technology is not an afterthought.

State-level initiatives have also had success. For example, the State of Washington led the way with its “Working-Age Adults Policy.” This policy focused on developmental disability setting as its goal to transition young adults with developmental disabilities from relying on state support to working in competitive, integrated employment (CIE). Previously in Washington, none of these young adults worked in CIE. After 15 years of the initiative, however, 89% of young adults were working in CIE. These young adults may not all be working full time and their incomes might be lower, but nevertheless the State of Washington’s funding for CIE

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22 "Integrated employment refers to jobs held by people with the most significant disabilities in typical workplace settings where the majority of persons employed are not persons with disabilities.” “Integrated Employment,” ODEP, http://www.dol.gov/odep/topics/IntegratedEmployment.htm (last visited May 27, 2013).
programs was able to achieve significant changes. As a result of Washington’s success, twenty-seven other states are trying to implement “employment first” initiatives.

Third, both federal and state governments have invested in independent living centers (ILC). An ILC is essentially an NGO run by persons with disabilities. These ILCs help persons with disabilities get out of institutions and live independently in the community. The ILCs train persons how to be good self-advocates, how to navigate disability benefits programs, and how to advocate at the local and state level for change. Persons with disabilities in charge of the ILCs have shown that they can employ persons with disabilities, help them become leaders, and help them enter the workplace. In the United States, there are over 300 ILCs. Some receive federal support, authorized by federal law that pays for vocational rehabilitation. In California, the state supports those ILCs that do not receive federal money. A major benefit of ILCs is a high return on investment. The ILC model, most notably implemented by Ed Roberts in Northern California, is an important model that is being emulated worldwide.

2. Academic successes

Next, academic efforts have helped to change thinking about individuals, workplaces, and how individuals work. Underlying these efforts is the concept of universal design, in which reasonable accommodation benefits everyone, not simply persons with disabilities. A recent

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study on post-secondary education involved training university faculty about their legal responsibilities to give reasonable accommodation to their students. The bulk of the awareness raising involved workshops designed to transform faculty thinking about reasonable accommodation as something one had to do, to instead thinking about accommodation as related to how one educates and why one educates. The workshops educated faculty on ways to reasonably accommodate students to reach and teach all types of learners. The study further tested the impact of these workshops, and how well the students were doing in those workshops. In the end, the study shows that reasonable accommodation can benefit all students and workers.

3. **Private sector successes**

Private-sector led efforts are fewer in number, but some have been surprisingly effective. One example is Walgreens, a drugstore chain with 270,000 employees nationwide. Walgreens had a senior vice president in charge of distribution, who had a child with a disability. He, with the support of two CEOs, was able to set a goal that 20% of the employees at their distribution centers, and 10% of new hires in their pharmacies, would be persons with disabilities. Walgreens built two new distribution centers, one in South Carolina and the other in Connecticut. Walgreens found that those new distribution centers—where the 20% disability hiring policy was in place—were outperforming the other centers. Not only were these centers not losing productivity from employing persons with disabilities, morale of persons without disabilities was higher than at other centers. Walgreens championed their unprecedented success at setting public goals for employing persons with disabilities by publicizing their story and speaking to national

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governors’ associations. Unfortunately, no other private employer has come close to achieving Walgreens’ success.

4. Legal successes

Finally, there have been several legal successes in promoting disability rights. First is the success of the interactive process in states such as California. The interactive process is a notion that requires the employee and employer to meet and informally discuss reasonable accommodation and make a good faith effort to find a solution. California law makes an employer’s failure to engage in the interactive process itself a violation of the law. Because of this mandate, California employers are more willing to engage in the interactive process than in other states.

Second, negative publicity and lawsuits have been effective at pressuring major corporations to be more accommodating. One example is Wal-Mart, where its executive vice-president of benefits sent out a memo about how Wal-Mart could impose job requirements designed to weed out persons with disabilities. This memo became public and generated a great deal of embarrassment. Another example is Starbucks, a board member of which joined the board of Disability Rights Advocates. A person of short stature was denied a job as a barista by

30 CAL. CODE REGS., tit. 2, § 7294.0 (2013).
a local Starbucks store manager. When this individual sued Starbucks for employment discrimination it generated negative publicity, and Starbucks immediately took action to remedy future discrimination.34

Still, such failure to hire cases have long been the most difficult to bring. The successful cases have involved direct evidence of disability discrimination, such as pre-employment medical screenings, rejection because of stated reasons, and applications asking prohibited questions. One case involved an African-American deaf woman who applied for a job at a catering company. During the interview, the woman told the recruiter that she couldn’t hear him. The recruiter responded, “I can’t hire you because you’re deaf.” Despite this evidence of direct discrimination, there was an issue with the woman’s qualifications; she lacked the minimum qualifications for the job. The case ended up having to settle with the catering company because she was not qualified. Even if you have a qualified individual in such cases, employers have to prove that the selection was not discriminatory.

On the other hand, employment class actions can achieve systemic change. One way is to use the Americans with Disability Act’s requirement for equal terms and conditions.35 This strategy focuses on systemic rather than individual qualifications. In one case, plaintiffs arranged for testers to ask for interviews at Target and request interpreters. When Target refused to provide interpreters, counsel for plaintiffs were able to negotiate a nationwide settlement. In a similar case, UPS was also not providing interpreters on the job for deaf people seeking employment. The plaintiffs won on appeal, which resulted in UPS establishing a nationwide system to ensure equal terms of employment. Such systemic class actions focus on policies and

35 42 U.S.C. § 12112(a).
practices rather than individual persons. On this front, the Equal Employment Opportunity Commission (EEOC) can play an important role, by bringing an enforcement action as a class action.

Thanks to efforts of disability rights advocates, the Disability Rights Bar Association (DRBA) was established at Syracuse University. The founding of the DRBA was a response to the perceived lack of understanding litigating disability rights cases. The DRBA therefore aims to build a community of lawyers to train the next generation of lawyers to be a much stronger advocacy force. Such a model could potentially be replicable in other countries.

B. Japan

On the Japanese side, the quota system has increased employment of persons with disabilities over the past 35 years. Although the actual employment rate of disabled persons lagged behind the quota rate set by the government, the actual employment rate of disabled persons increased steadily from 1.09% in 1977 to 1.69% in 2012. However, in 2012, only 46.8% of companies were in compliance. Over the last decade, less than 50% of companies were compliant. Among large companies, the compliance rate exceeded 50% in 2009.

One reason that more companies have failed to meet the quota rate is that government sanctions are not effective. Public employment agencies may order non-compliant companies to submit plans for increasing employment of persons with disabilities, recommend steps to hasten the execution of these plans, or publicly announce the name of laggard companies. Nevertheless,

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37 For statistics from 1998 to 2009, see Hasegawa, supra note 16, at 33. Professor Hiroyo Tokoro presented the data for 1977 and 2012 at the conference.
39 Data provided by Professor Tokoro at the conference.
in 2012, there were 40,000 non-compliant companies; the government ordered only 363 companies to submit a plan and announced only three company names.\textsuperscript{40}

Within the Japanese quota system are two unique concepts: the “special subsidiary” and the “double count.” First, in 1987, the subsidiary system was established.\textsuperscript{41} Under this system, a parent company can establish a special subsidiary to provide accommodation to persons with disabilities. If those subsidiaries meet specified conditions, the parent company may count those disabled employees toward their quota. As of 2011, nearly half of those employed by subsidiaries were persons with intellectual disabilities, which is a marked increase over the last decade. Second, the “double count” for the severely disabled and the “half count” system for part-time disabled workers incentivized employers to add these individuals to the workforce.\textsuperscript{42} However, some researchers criticize these systems because they appear to infringe upon human rights. Nevertheless, these systems have increased the number of employees with disabilities in the workforce. The subsidiary system has become increasingly popular, allowing employers to comply with their quotas without having to restructure the main company.

To remedy wage disparity, the Minimum Wage Act was amended in 2008 to provide a commensurate wage system for persons with disabilities in open employment.\textsuperscript{43} This commensurate wage rate is a special minimum wage paid to a worker with a disability, based on the worker’s productivity in proportion to the wage and productivity of experienced non-disabled workers performing essentially the same type, quality, and quantity of work. Employers face fines if they do not pay this commensurate wage rate. The commensurate wage is an

\textsuperscript{40} Data provided by Professor Tokoro at the conference.
\textsuperscript{41} See Hasegawa, \textit{supra} note 16, at 36-37.
\textsuperscript{42} \textit{Id.}, at 35.
improvement over the old system, because it objectively assesses the productivity of employees with disabilities and creates fairer wages and more employment opportunities. Still, the commensurate wage system has limitations, as it calculates commensurate wages as a percentage of the minimum wage rather than the average wage, and is more suited to the manufacturing industry than the service industry.

Finally, as an analogue to “reasonable accommodation” in the United States, the idea of employer accommodation has developed to some extent in Japan, especially under the Labor Contract Act. 44 Under that Act, employers must provide for the safety of employees under contract. If a worker becomes disabled and cannot perform her prior work functions, the employer cannot place the employee on leave without pay or immediately dismiss the worker. Case law provides that under certain circumstances, contract employees are protected. Even if there were no suitable jobs and the worker could not return to her prior job, the employer could not dismiss the worker unless the employer gave accommodation to the worker for a period of time. Nevertheless, these accommodations are restricted to contractual employees.

IV. Question Three

Question Three asked, “What changes do you envision over the next five years that could improve employment opportunities for people with disabilities?” The American participants predicted that government initiatives would continue to drive change, while market-driven reforms could also be significant in employing more disabled workers. The Japanese participants hoped that their government would pass a long-awaited anti-discrimination law, and

perhaps also install an agency analogous to the United States’ EEOC to enforce anti-discrimination statutes.

A. United States

A number of changes over the next five years would help place more persons with disabilities in the workplace. First, and most importantly, would be an economic turnaround from the recent recession. However, there are fears that high structural unemployment would become the “new normal.” When unemployment is high, persons with disabilities suffer disproportionately. This last fact is a reality that ought to inform all future policy decisions.

On the other hand, there may be a silver lining in the recent “recovery”—from working with clients, one participant could see firsthand that more persons with disabilities are getting jobs. This recovery might strengthen over the next five years. Similarly, the recent ADA amendments hold out some hope that they will counter adverse economic conditions.45 Yet more evaluation of those amendments would need to occur before deeming them effective. If the amendments are not effective, then the United States truly needs a comprehensive program to create incentives for persons with disabilities to enter the employment market and stay in that market.

Second, on the litigation front, there appears to future for bringing employment cases, and for trying to get the federal government to live up to its mandate to be a model employer. Akin to what has been done with housing, funding to support true open doors and effective testing is critical. For example, California has good laws on the books, but advocates still need to see if the laws can be used effectively. Disability rights attorneys should collaborate more and

45 See ADAAA, supra note 5.
share strategies across the country. Also helpful would be formal collaboration between private firms and nonprofits to work on systemic enforcement of disability rights.

Third, continuing to raise public awareness remains critical. Personal narratives are important and especially effective because they helped drive home the point, creating an “aha” moment. Personal narrative has a special power to educate people about what it is like to live with a disability.

Fourth, major policy changes in affirmative action and entitlements could help increase employment with persons with disabilities. With the federal government acting as a “model employer,” affirmative action would be a huge opportunity. Federal contractors represent 22% of the entire labor force in the United States.46 The Office of Federal Contract Compliance Programs’ (OFCCP) set a goal of 7% employment of disabled persons among federal contractors, but this goal has been criticized by employers.47 Nevertheless, if the rule is implemented, it will put a lot of pressure on contractors to hire persons with disabilities. Because they have not previously dealt with the numbers of persons with disabilities the demand will impose, the results promise to be interesting. More affirmative action can also take place among disability rights groups, which have had a poor track record of hiring persons with disabilities.

As for entitlements, many policymakers from both Republican and Democratic parties believe that the government can no longer afford entitlement programs. A recent report suggests

that nearly one-third of adults who receive government aid have disabilities. Thus, persons with disabilities have a large stake in any entitlement reform. Entitlement reform could progress like welfare reform did, or there could be a big political fight and have little to show for it in five years. Unfortunately, there is little bipartisan leadership right now on entitlement reform.

Fifth, market driven reforms could potentially be successful. Persons with disabilities and their families constitute a large consumer market. One could envision rating companies according to how well they treat persons with disabilities. In the works is a disability equality index, similar to the corporate equality index. If such an index develops, it could influence larger employers, which would then have a ripple effect among all employers.

Finally, one major change could be bringing into the disability rights fold allied groups, such as autistic children moving from school into adulthood, and veterans with post-traumatic stress disorder. Both these groups have potential to have political power. Both groups will be hard to ignore. The question is, what will they be asking for? For example, autism proponents typically ask for “autism-specific” solutions. However, if one could bring these two groups into a cross-disability coalition, that coalition could be a powerful voice for change.

B. Japan

Over the next five years, the most important goal in Japan is to establish a Disability Discrimination Act. Such an act would ameliorate the shortcomings of the quota system and expand the limited scope of accommodation under the Labor Contract Act. The Japanese government has begun to draft an anti-discrimination law according to CRPD guidelines and has

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published a preliminary opinion outlining its general features. First, the anti-discrimination will regulate not just employment, but transportation, education, medical care, and judicial process. The Act will aim to provide a code of practice to prevent discrimination. Moreover, like the CRPD, the proposed Act will account for social barriers in the definition of disability. Two types of prohibited discrimination will include the failure to provide reasonable accommodation (as in the ADA), and disparate treatment of workers based on their disability. The opinion also allows affirmative action and an ADR system. Even if the Act were passed as is, some issues would remain, such as whether to prohibit indirect disability discrimination, or whether to establish a more powerful administrative body.

Such an anti-discrimination act should work with the quota system to create a hybrid system. First, the quota system operates on a narrow definition of disability. Anti-discrimination laws could broaden the definition of disability to include those with mild disabilities, while the quota system could continue to cover persons with severe disabilities. Second, Japan must determine whether the quota system is compatible with anti-discrimination laws. Both the quota system and the subsidiary system promote the employment of persons with disabilities, and thus would appear to comport with the CRPD. Third, Japan must link the cost of reasonable accommodation with the levy system, which would help pay for employer accommodation.

Next, Japan should establish a special administrative agency, analogous to the EEOC, to help resolve disability discrimination disputes. Currently, disputes are resolved in the judicial system, with mediation provided by administrative agencies. Local centers and public

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50 See generally Nakagawa & Blanck, supra note 11, at 214-16.
employment agencies also provide counseling for those who have had trouble in the workplace, but these groups do not provide mediation programs and lack the authority to bind employers to their recommendations. Court cases are ineffective because they take too long, and judges are more interested in awarding money settlement rather than keeping persons with disabilities employed or repairing their relations with employers.

Finally, two major changes could help increase employment of persons with disabilities in Japan. First, Japanese policy lacks adequate income guarantees for persons with disabilities. This scheme should be changed to make up for any lost income or to guarantee a minimum standard of living. Second, persons with disabilities have difficulty finding jobs that match their abilities or aspirations. Japanese policy must more effectively cultivate new employment markets for persons with disabilities. Current service providers are overtaxed and are unable to develop individual job search plans for disabled workers seeking employment.

V. **Question Four**

Question Four asked, “What do you see the role of international law, if any, in addressing employment for people with disabilities?” While the American participants were skeptical about direct effects of international human rights treaties on U.S. policy, they remained hopeful that such international instruments would continue to raise domestic awareness of disability issues. The Japanese participants were more positive about the CRPD’s effects on disability policy in Japan, given their country’s past willingness to sign and ratify international human rights treaties.

A. **United States**

The discussants were divided on the potential impact of the United Nations Convention on the Rights of Persons with Disabilities on U.S. domestic disability policy. Article 27 of the
CRPD (Work and Employment) can influence States Parties who have signed and ratified the CRPD.\textsuperscript{51} Article 27 represents a hybrid approach, where affirmative employment measures (such as quotas) and rights-based measures are not incompatible with international agreements. Countries such as Germany and Japan can be leaders of the hybrid approach. In addition, Article 8 asks States Parties to raise awareness, an obligation to educate persons about disability rights.\textsuperscript{52} Such awareness campaigns can be a tool for activists to pressure their governments and work to make rights a reality.

Nevertheless, the CRPD remains mostly aspirational, to the extent that countries would need to adopt the Optional Protocol of the CRPD to have an enforcement mechanism. And even if the United States ratified the CRPD and the Optional Protocol, a plaintiff in the United States would still have to exhaust her domestic remedies before reaching the CRPD. It would be difficult to predict how the committee organized by the CRPD would respond to an adverse decision by the United States Supreme Court. Also, what value would a United States court place on a CRPD committee decision? Even without an enforcement mechanism, the CRPD would still provide a tool for NGOs to use and pressure their countries to take steps and mobilize participation. Such countries care about how they comply with international human rights instruments.

Generally, the United States is very wary about international human rights treaties such as the CRPD. The United States did not agree to the treaty, and U.S. policymakers believed that doing so would “muddy the waters,” as the US already had the ADA, a model disability rights law based on a civil rights model. In contrast, Europeans talk about human rights, not civil rights. Human rights in their laws are developed in the context of the social safety net. For example,

\textsuperscript{51} CRPD, supra note 1, art. 27.  
\textsuperscript{52} Id. art. 8.
European polities do not have the same debates over health care that the US does. In Japan, most persons have lifetime employment. The US does not understand human rights in the context of international human rights, and that the US could have agreed to the treaty very easily with very little change.

The US delegation to the CRPD said early on that it was not going to sign or ratify the CRPD. The only time the delegation was vocal was on the right to life issue. When the US Senate failed to ratify the CRPD in December 2012, the main argument against the CRPD was the perceived loss of state sovereignty. Also, part of the opposition in the Senate was that the CRPD would prevent parents from homeschooling children. In terms of prospects for U.S. ratification, some of the senators opposed on grounds that it was being rushed through the lame duck session.

Activists had been lobbying to have the CRPD ratified, arguing that with ratification, the US would maintain its leadership in the disability field. Moreover, as an international instrument, CRPD would have great effect in creating strong international norms. If the US were to ratify the CRPD, the US would be part of a global effort to bring disability rights to the forefront and help individuals in other countries. Otherwise, it would be difficult for the US to be an international leader if it failed to ratify the CRPD, and hypocritical to tell other countries to follow the CRPD without the US following it.

Even if the US had ratified the CRPD, would it change the lives of persons with disabilities in the US? If the CRPD were ratified, one starting point would be to produce a report on how the US has complied with the CRPD. The CRPD offers expanded ways of thinking about disability. To the extent that the CRPD challenges the US to take more affirmative measures, the CRPD might push domestic law to the next level. So far, the public dialogue in the US has been,
“Our laws are perfect.” But the idea that our law complies with everything in the CRPD is a faulty premise.

On the legal front, the CRPD would not play a direct role. Litigators will not have much success in disability rights cases even if the US ratifies the CRPD. However, the CRPD would have political effects. It would help communities understand what disability rights might mean, and what is being done in other countries. The CRPD would contribute to consciousness raising and political efforts on the ground in the US.

Nevertheless, the ongoing conversation among advocates in different countries will provide ideas and support for advocates in the US to push for different types of initiatives. As the CRPD sinks into the consciousness of domestic advocates, it will become part of the conversation with legislators and policymakers. The CRPD will have to go through a long cycle of law review articles and being cited in case footnotes before the CRPD takes root.

B. Japan

The CRPD will likely have a positive impact on Japanese policy. Japan has historically been willing to implement international human rights norms in domestic policy.53

When Japan ratifies an international law, it typically enacts domestic laws based on that international law. Absent such a domestic law, there would be an issue whether international law would have any effect on domestic cases. The Constitution of Japan provides that treaties ratified by the Cabinet with the approval of the Diet have effect as domestic law through promulgation of the treaties by the Emperor.54 The Constitution also provides for the faithful observance of

54 NIHONKOKU KENPO [KENPO] [CONSTITUTION], art. 7.
ratified treaties and the law of nations. Thus, most academics understand that self-executing international laws are binding on domestic cases. Moreover, international law is inferior to the Constitution, but superior to acts. Nevertheless, few judicial decisions have considered international law to be binding on domestic cases. Some cases have even limited the effect of international law by holding that analogous domestic acts are necessary before international law is binding on Japan.

Following the CRPD’s signing, however, Japan has yet to enact a domestic anti-discrimination law. Part of this delay is because of political changes: the Liberal Democratic Party disfavored enacting a domestic anti-discrimination law, while the Democratic Party of Japan favored doing so. Although progress was made while the latter party was in power, the Liberal Democratic Party has returned to power and the future of the anti-discrimination law is uncertain.56

Despite the delay in enacting an anti-discrimination law, the disability committee report’s definition of disability is broader and almost matches the CRPD’s definition. The report also defines three types of disability discrimination: (1) disparate treatment; (2) discrimination arising from disability; and (3) failure to provide reasonable accommodation. Still, the report is silent on whether a new administrative agency is to be established to enforce the new anti-discrimination law.

55 Id. art. 98, para. 2.
56 The anti-discrimination law was eventually enacted on June 19, 2013. See supra, note 49.
**Peter Blanck**

Dr. Blanck is University Professor at Syracuse University, which is the highest faculty rank granted to only eight prior individuals in the history of the University. He is Chairman of the Burton Blatt Institute (BBI) at Syracuse University. Dr. Blanck holds appointments at the Syracuse University Colleges of Law, and Arts and Sciences, David B. Falk College of Sport and Human Dynamics, School of Education, and the Maxwell School of Citizenship and Public Affairs. Prior to his appointment at Syracuse, Dr. Blanck was Kierscht Professor of law and director of the law, Health Policy, and Disability Center at the University of Iowa. Dr. Blanck is Honorary Professor, Centre for Disability Law & Policy, at the National University of Ireland, Galway. Dr. Blanck received a Bachelor of Arts from the University of Rochester, a Juris Doctorate from Stanford University, where he was President of the Stanford Law Review, and a Ph.D. from Harvard University. Dr. Blanck has written articles and books on the Americans with Disabilities Act (ADA) and related laws, and received grants to study disability law and policy. He is a trustee of VAI/National Institute for People with Disabilities Network and is Chairman of the Global Universal Design Commission (GUDC). He is a former board member of the National Organization on Disability (N.O.D.), the Disability Rights Law Center (DRLC), and Disability Rights Advocates (DRA). He also is a former member of the President's Committee on Employment of People with Disabilities, and was a Senior Fellow of the Annenberg Washington Program, a Fellow at Princeton University's Woodrow Wilson School, and a Mary Switzer Scholar. Prior to teaching, Dr. Blanck practiced law at the Washington D.C. firm Covington & Burling, and served as law clerk to the late Honorable Carl McGowan of the United States Court of Appeals for the D.C. Circuit.
Dr. Blanck's recent books in the area include: The Americans with Disabilities Act and the Emerging Workforce (AAMR, 1998); Employment, Disability, and the Americans with Disabilities Act (Northwestern U. Press 2000); Disability Civil Rights Law and Policy (with Hill, Siegal & Waterstone) (West, 2005, 2009); and Race, Ethnicity, and Disability: Veterans and Benefits in Post-Civil War America (with Logue) (Cambridge University Press, 2010). Dr. Blanck and Robin Malloy are editors of the Cambridge University Press series Disability Law and Policy.

**Claudia Center**

Claudia Center is a Senior Staff Attorney and Director of the Disability Rights Program at the Legal Aid Society–Employment Law Center (LAS–ELC) in San Francisco. She has been with LAS–ELC since 1995. Ms. Center litigates cases that secure workplace accommodations and increase protections for disabled persons. In 1997, Ms. Center established The Libra Project, an initiative to advance the employment rights of persons with psychiatric disabilities and other "hidden" impairments. In 1999 and 2000, she played a key role in the passage of comprehensive amendments to California's Fair Employment and Housing Act that broadened protections for persons with disabilities. In 2001, she argued before the U.S. Supreme Court in *US Airways, Inc. v. Barnett*, a case that clarified the broad scope of "reasonable accommodations" for employees with disabilities. Ms. Center worked on the drafting of the ADA Amendments Act of 2008. In 2011, she started the Workers' Rights Disability Law Clinic (WRDLC) at the Ed Roberts Campus, a universally designed disability community center in South Berkeley. The WRDLC is staffed by law students from the University of California at Berkeley, and is co-sponsored by Disability Rights Education and Defense Fund (DREDF). Ms. Center is actively engaged in
appellate and amicus work, and serves on DREDF's board of directors. In 2009, she received the Paul G. Hearne Award for Disability Rights, presented annually by the American Bar Association's Commission on Disability Rights.

**Satoshi Hasegawa**

Satoshi Hasegawa is Associate Professor of Labor Law, School of Law, Kanda Campus at Senshu-University, Tokyo, Japan. He attended Chua-University, Japan. From 2007 to 2011, Mr. Hasegawa was a Lecturer and Associate Professor of Labor Law in the School of Law at Chuo-Gakuin-University in Chiba, Japan.

**Tamako Hasegawa**

Tamako Hasegawa is an Associate Professor at Fukushima University, Japan. She got her Ph.D. in Juridical Science from Tohoku University in 2005. She teaches Employment Law, and Social Security Law. Her focuses are on the harmonization of the anti-discrimination law with the quota system for persons with disabilities and on the discontinuous policies for persons with disabilities between Employment Law and Social Security Law.

**Katharina Heyer**

Katharina Heyer is Assistant Professor of Political Science at the University of Hawai'i. Her research and teaching focus on the sociolegal inquiry into rights, social movements, and comparative law. Born and raised in the American sector of what was then called West Berlin, as well as spending years living in Japan, she developed a lifelong interest in the American influence on German and Japanese postwar politics, welfare states, and legal reforms. Trained as
Kathleen Martinez

Kathleen Martinez was nominated by President Barack Obama to be the third Assistant Secretary for Disability Employment Policy and was confirmed by the U.S. Senate on June 25, 2009. As head of the U.S. Department of Labor's Office of Disability Employment Policy (ODEP), Ms. Martinez advises the Secretary of Labor and works with all DOL agencies to lead a comprehensive and coordinated national policy regarding the employment of people with disabilities.

Blind since birth, Ms. Martinez comes to ODEP with a background as an internationally recognized disability rights leader specializing in employment, asset building, independent living, international development, diversity, and gender issues.

She was appointed Executive Director of the World Institute on Disability (WID), based in Oakland, California, in 2005. Ms. Martinez directed Proyecto Visión, WID's National Technical Assistance Center to increase employment opportunities for Latinos with disabilities.
in the United States, and Access to Assets, an asset-building project to help reduce poverty among people with disabilities. At WID, she also led the team that produced the acclaimed international webzine DisabilityWorld (www.disabilityworld.org) in English and Spanish.

In 2007 she was appointed a member of the board of the U.S. Institute of Peace, a Congressionally created agency dedicated to research and projects in conflict management. In 2005 Secretary of State Condoleezza Rice appointed her as one of eight public members of the newly-established State Department advisory committee on disability and foreign policy.

In 2002 she was appointed by President Bush as one of 15 members of the National Council on Disability, an independent federal agency advising the President and Congress on disability policy.

**Andrew Imparato**

Andrew J. Imparato began work in November 2010 as Senior Counsel and Disability Policy Director for the U.S. Senate Committee on Health, Education Labor and Pensions, chaired by Senator Tom Harkin of Iowa. In this role he is Senator Harkin's principle adviser on disability issues. He is currently working on a bipartisan disability employment initiative designed to increase the labor market participation of working age people with disabilities in the U.S. He is also working on expanding access to home and community-based long-term services and supports and making the disability entitlement programs more supportive of people who want to work.

From 1999-2010, Mr. Imparato served as President and Chief Executive Officer of the American Association of People with Disabilities (AAPD), the largest cross-disability membership organization in the U.S. AAPD's mission is to organize the disability community to
be a powerful force for political, economic and social change. During his time at AAPD, Mr. Imparato was a Democratic Senate appointee to the bipartisan Ticket to Work and Work Incentives Advisory Panel, where he led the Panel's effort to transform disability entitlement programs so that they are more consistent with the goals of the Americans with Disabilities Act.

While at AAPD, Imparato helped to organize a coalition of more than 200 disability, civil rights and employer organizations to support passage of the Americans with Disabilities Act Amendments Act (ADA Amendments Act), which was championed by Senator Harkin and signed into law by President Bush on September 25, 2008. The legislation overturns four problematic U.S. Supreme Court decisions and restores protections under the ADA to millions of Americans with epilepsy, diabetes, depression, cancer and a wide range of other disabilities. Mr. Imparato testified before the House Education and Labor Committee in support of the bill, played a key role in the negotiations that led to the employer-supported legislative language, and helped with the political strategy to get the bill passed with overwhelming bipartisan support.

Mr. Imparato, whose perspective is informed by his own experience with bipolar disorder, has more than two decades of experience in disability policy and advocacy. His essay on the U.S. Supreme Court's rulings relating to disability rights appears in _The Rehnquist Court: Judicial Activism on the Right_ (H. Schwartz, ed., Hill and Wang, 2002). He co-authored an article in 2003 for the _Stanford Law & Policy Review_ that helped make the case for the ADA Amendments Act, "Redefining 'Disability' Discrimination: A Proposal to Restore Civil Rights Protections for All Workers" (14 _Stan. L. & Pol. Rev._ 2, with Claudia Center, 2003). While at AAPD, Mr. Imparato was an advisor on corporate social responsibility, consumer, disability market, equal employment opportunity and accessibility issues for Verizon, Time Warner, AT&T, Microsoft, IBM, SAP, Wai-Mart, and other leading businesses.
In 2005, Mr. Imparato was named one of "Ten Outstanding Young Americans" by the U.S. Junior Chamber of Commerce (Jaycees), given each year to 10 individuals under the age of 40 based on their contributions to American society. In 2006, Imparato received the Secretary's Highest Achievement Award from Mike Leavitt, the Secretary of Health and Human Services. The same year, Mr. Imparato received the "Universal Accessible Transportation Award" from Norm Mineta, the Secretary of Transportation. His work has been recognized by the National Council on Independent Living, National Association of the Deaf, the Association of University Centers on Disabilities, and others.

Prior to joining AAPD, Mr. Imparato was general counsel and director of policy for the National Council on Disability, an attorney advisor with the US Equal Employment Opportunity Commission, counsel to the U.S. Senate Subcommittee on Disability Policy, and a staff attorney/Skadden Fellow with the Disability Law Center in Boston, Massachusetts.

Mr. Imparato graduated with distinction from Stanford Law School and is a summa cum laude graduate of Yale College.

**Jun Nakagawa**

Jun Nakagawa is Chair and Professor at Department of Social Policy, Hokusei Gakuen University. He teaches Employment Law, Disability Law, Social Welfare Law, and Mediation Method. His recent focuses are on the normative basis of reasonable accommodation for employees with disabilities and on pro rata wage system for employee with disabilities and disability pension on comparative basis. He was Chair of the 2008-2009 and 2009-2010 Reports of Comparative Studies of Reasonable Accommodation for Persons with Disabilities and submitted them to the Minister of Cabinet Office.
Lawrence Paradis

Larry Paradis is the Executive Director and Co-Director of Litigation for Disability Rights Advocates. He specializes in class action and other high-impact disability rights litigation. He has handled many precedent-setting ADA cases in areas such as employment, housing, transportation, education, insurance, and public accommodations. Mr. Paradis was recently named by California Lawyer Magazine one of California's Lawyers of the Year for his victories in civil rights cases in 2003. In 2004, Mr. Paradis was voted, along with his co-counsel, Trial Lawyer of the Year by the San Francisco Trial Lawyers Association.

Mr. Paradis is a past member of the President's Committee on the Employment of People with Disabilities and has been on the boards of many public interest organizations such as the Berkeley Center for Independent Living, National Council on Disability: International Watch Committee, American Civil Liberties Union of Northern California, Berkeley Commission on Disability, Disability Statistics Center at UCSF (Advisory Board), UCSF Center for Personal Assistance Services Advisory Committee.

Mr. Paradis has also assisted the courts as a court appointed mediator, as a Ninth Circuit Judicial Council Lawyer Representative from the U.S. District Court for Northern District of California and as a member of a Magistrate Judge Selection Panel, U.S. District Court for the Northern District of California.

Before co-founding Disability Rights Advocates, Mr. Paradis was a partner at the law firm Miller, Starr and Regalia, where he focused on complex business litigation as well as pro bono civil rights work.

Hiroyo Tokoro
Hiroyo Tokoro, Ph.D. is the Associate Professor of Employment Law at Niigata Seiryo University in Niigata, Japan. Her research interest has been focused on legal rights for workers with mental health problems. She earned her Ph.D. in Juridical Science from Hokkaido University in 2010. Her dissertation findings suggest possibility of introducing ADA antidiscrimination approach into Japanese legal systems for employees with psychiatric disabilities.

**Michael Waterstone**

Michael Waterstone is Associate Dean for Research and Academic Centers and J. Howard Ziemann Fellow and Professor of Law at Loyola Law School in Los Angeles, California. After law school, Mr. Waterstone clerked for the Honorable Richard S. Arnold on the United States Court of Appeals for the Eighth Circuit, then worked as an associate in the Los Angeles law firm of Munger, Tolles, & Olson for three years. From 2003-2006, Mr. Waterstone taught at the University of Mississippi Law School. He joined Loyola's faculty in the fall of 2006.

Mr. Waterstone's scholarship has focused on disability and civil rights law. He is one of the co-authors of a leading casebook on disability law and his recent articles have been published in the Harvard Law Review, Notre Dame Law Review, Minnesota Law Review, Duke Law Journal, Vanderbilt Law Review and Northwestern Law Review, among others. He is a former commissioner on the American Bar Association's Commission on Physical and Mental Disability Law, and a current member of the California State Bar's Commission on Access and Fairness. He is the former chair of the American Association of Law School's Section on Disability Law, and
has testified before the United States Senate on issues relating to voters with disabilities and older voters. He teaches Civil Procedure, Disability Law, and Employment Law.