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**Advancing the Rights of Persons with Disabilities:
A US-Iran Dialogue on Law, Policy, and Advocacy**

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Assessing the Policy Divide Between Veteran and Non-Veteran Americans with Disabilities

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Disabled veterans historically have been accorded social welfare support and been viewed as an integral part of their societies at a level above that of the general population of persons with disabilities (Gerber, 2000). Present in most countries, such preferential treatment is grounded in moral responsibility felt towards those who have sacrificed their well-being on behalf of the State, despite variation between States in the extent of their respective disabled veteran policies (Cohen, 2001). This divergent treatment, predicated on the origin and consequent inherent “worthiness” of disability, is bolstered by deep seated notions that veterans with disabilities are expected to return to the workforce while persons otherwise disabled are exempt from labor market participation (Waterstone, 2009). The United States has a two-tier system of disability law and policy, one for veterans with disabilities and one for the general disability population. The government framework towards veterans with disabilities has greater coherence; however lessons can be drawn from both schemes.

A two-tier system

Federal disability law and policy for people with disabilities is multifaceted. Most prominent is the Americans with Disabilities Act (hereafter ADA), an antidiscrimination law adopted in 1990 that contains the express right to be treated equally without regard to disability (ADA, 1990). One of the most prominent—if not the preeminent—priorities of the ADA was to create conditions under which people with disabilities can work. Moving people with disabilities into the labor force was a proposition that had support on both sides of the political aisle (Bagenstos, 2003). The importance of employment to a previously marginalized group is a bedrock principle of antidiscrimination law generally, and is a proposition that has gathered popular academic support (Schultz, 2000).

Separate from antidiscrimination law, and operating from a very different set of premises, are more direct forms of assistance that the government provides. Categorized loosely as a “social safety net,” “social welfare policy,” or even “positive rights,” the focus is on affirmative ways the government can help people with disabilities. These federal laws and programs either directly or indirectly provide goods and services to certain people with disabilities, including cash payments, medical goods, and diverse services. The programs are eligibility driven, and the criteria for acceptance rests on medical assessments made of the individual. Would-be participants are evaluated “objectively” by medical professionals and government bureaucrats who in turn make gate-keeping determinations as to whether an individual’s medical condition makes them eligible to receive benefits. The bulk of American federal disability welfare spending goes to four programs: Social Security Disability Insurance

(SSDI); Supplemental Security Income (SSI); Medicare; and Medicaid (Waterstone, 2009). SSDI and SSI provide income support while Medicare and Medicaid provide medical benefits. SSI and Medicaid are restricted to persons with low incomes; SSDI is available only to those with a work history who become disabled. Medicare is the national health insurance program for persons over age 65, but is also available for persons who have received SSDI benefits for at least two years.

This historical model of conceiving disability, referred to as the medical model, casts people with disabilities as the passive recipients of public welfare or charity. For fear of frauds or cheats (or extending the social welfare net further than is politically acceptable), most of these programs are designed to be restricted to people who at least at some point are so disabled that they cannot work. They therefore contain significant work disincentives or require some distance and detachment from the labor market to obtain entry into the system. Accordingly, the four assistance programs, and the interaction between them, have been criticized for creating incentives for people to not return to work (Burkhauser, 1997).

Partially in response to criticism of an emphasis on non-work, legislators have begun to enact some revisions. In 1999, Congress passed the Ticket to Work and Work Incentives Improvement Act (hereafter TWWIIA), which allows people with disabilities who leave the SSDI rolls to retain Medicare eligibility for eight and a half years (TWWIIA, 2006). After that point, Medicare eligibility is lost. TWWIIA also provides for an expedited reinstatement of Medicare or Medicaid benefits to recipients who, after a period of time in the labor market, become unable to work again. Finally, TWWIIA limits the degree to which work activity can be used to prove that a recipient no longer has a disability (TWWIIA, 2006). Similarly, if an SSI recipient with a disability returns to work, medical benefits under Medicaid are not ended until the recipient's monthly income exceeds the sum of the monthly SSI cash benefit, any impairment-related work expenses, and the monthly cost of Medicaid benefits and publicly funded attendant care services previously paid to the recipient (Waterstone, 2009). Although positive steps, these patchwork attempts at overhaul have not yet moved large numbers of people off the SSI or SSDI rolls. In large measure this is because job training and support has traditionally not held a prominent place in the American policy scheme, there being little in the way of a national job training program for people with disabilities (Stein & Stein, 2007).

By contrast, since the time of its founding the United States has had a stated commitment to care for its wounded warriors. Veterans with disabilities historically have been viewed by the public as the "deserving" disabled (Hubbard, 2006), and more recently stories of returning veterans with disabilities acclimating to their new lives have been quite prevalent in the media. In step with public opinion, politicians and policymakers have operated from a stated desire to care for returning veterans of foreign wars (Liachowitz, 1988). Perhaps the seminal statement regarding veterans with disabilities came in President Lincoln's second inaugural address, when he challenged a divided nation to "bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and his orphan" (Lincoln, 1865). This is still the operating principle of the Department of Veterans Affairs. Politicians and policymakers have not wanted to be on the wrong side of veterans with disabilities. In consequence, veterans with disabilities have had access to favorable laws, programs, and services not available to the general population of people with disabilities (Gerber, 2001).

Veterans with disabilities can proceed with employment discrimination claims under the ADA. However, they have additional and expanded protections under the Uniformed Services Employment and Reemployment Rights Act (hereafter USERRA) which include a broader category of reasonable accommodations, and employer mandated training or retraining for employment positions (USERRA, 2006). Veterans' disability benefits are more generous than SSI and SSDI, tax free, and not subject to reduction based on future employment (Veterans, 2007). Moreover, the Veterans Administration Pension system renders veterans with disabilities with low incomes eligible for monetary support; the Veterans Administration Health Care system provides primary and secondary medical care; and veterans with service-connected disabilities are entitled to important transportation benefits (Waterstone, 2010). Finally, veterans with disabilities have access to the Vocational Rehabilitation and Employment Program which assists veterans with service-connected disabilities to obtain and retain employment (Waterstone, 2010).

In sum, veterans with disabilities have access to favorable laws, programs, and services that are limited to their ranks and deploy both antidiscrimination law and social welfare policies in a more integrated manner than does general disability policy.

Lessons drawn

Veterans with disabilities are a discrete population the United States government and the public have pledged to support. In contrast, the general population of people with disabilities is larger and more diffuse. Although at various points the federal government has undertaken the task of creating equal opportunity for this broader group, important pieces of their welfare have been left to individual states or completely unattended.

This is not to infer the status of veterans with disabilities as the “deserving disabled” has meant that targeted employment-based strategies have worked perfectly. Veterans with disabilities have not been able to escape many of the problems that have infected the general disability landscape. Veterans programs and commitments are chronically underfunded, poorly administrated, and bureaucratically inefficient. Nor do veterans with disabilities escape stigma and suspicion. Indeed, there is a sad reality at work here for the neglect of veterans with disabilities by policymakers that has historically outlived the public's immediate embrace of their service and sacrifice.

Nevertheless, veterans programs offer important insights on what types of policies could be more effective at moving people with disabilities into the workforce—a goal the federal government has continuously identified as worthy of a federal response. To this end, veterans programs provide support for both a broader conception of antidiscrimination law and associated social welfare programs that reduce structural barriers to employment.

Although wholesale implementation is unlikely, veterans-specific disability measures have at times benefited the larger disability community. At a systemic level, veterans programs can serve as a template that could be applied, with modifications, to a larger community of people with disabilities. Thus, for example, the United States' first foray into workers' compensation was similar to compensation already provided to veterans with disabilities (Scotch, 1993). Similarly, SSDI was initially based on aspects of the civil war pension scheme

(Stone, 1984). While vocational rehabilitation may have had its roots in the desire to help workers who had been injured on the job, its overall development was equally influenced by a desire to reintegrate veterans with disabilities into the workforce (Drimmer, 1993).

Veterans with disabilities can also increase overall acceptance of the disability classification. Returning veterans have favorably influenced how the public and policymakers view disability (Liachowitz, 1988). The shift away from treating people with disabilities as inevitable wards of the state and toward rehabilitation was spearheaded by veterans returning from World War I (Scotch, 1993). The Vietnam and Gulf Wars created recognition of war-related disabilities like post-traumatic stress disorder and disease based on environmental exposure, which were aided by understanding chronic disease in civilians (Hubbard, 2006). And, more generally, veterans with disabilities helped gain acceptance of the social model of disability, which took hold as social policy for all people with disabilities in the enactment of the ADA (Stein & Stein, 2007).

Finally, because history shows that the popularity of veterans fades over time as they gradually become subsumed into the general disability community, it is in the veterans with disabilities' self interest to use their unique political status to advocate for measures that have wider benefit to the disability community.

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