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**Civics 101**

**EP 113: The Americans With Disabilities Act**

**Virginia Prescott:** [00:00:23] This is Civics 101. I'm Virginia Prescott. Nearly three decades ago the Americans With Disabilities Act became law. It was a huge piece of legislation affording protections and accommodations for millions of people. But how did the change life for the disabled in the United States and has it done what advocates hoped it would do. And what are the challenges to the FDA. Joining us today is Lennard Davis. He's a Disability Studies specialist and author of a book on the history of the ADA. Lennard, thank you so much for joining us.

**Lennard Davis:** [00:00:56] Thank you for having me.

**Virginia Prescott:** [00:00:58] Broadly, what was the intention of the Americans With Disabilities Act?

**Lennard Davis:** [00:01:01] Well the intention was to provide the same civil rights that other groups had had attained at that point. People of color, people national origin, ethnicity, and women were already, had were written into the law to have their civil rights laid out and clearly stated. But people with disabilities felt while the now their time had come for such a legislation the feeling was that there was an act was needed to bring to the general public's attention the discrimination that people with disabilities faced.

**Virginia Prescott:** [00:01:36] As a Civil Rights Act, how does it compare to the 1964 Civil Rights Act?

**Lennard Davis:** [00:01:42] Yeah that's an interesting question because the '64 act was dramatic and is well-known by everybody because it crossed an important threshold especially for African-Americans in the United States but also for other minorities. And it basically said hey you can't discriminate against people based on their race, national origin, skin color. The interesting thing about that act is it actually was at the time a much less inclusive act, much less broad act than the Americans With Disabilities Act of 1990. So it covered certain areas but certainly not as much and wasn't as grand and sweeping and I think people don't quite realize that the Americans With Disabilities Act was actually the broadest most sweeping civil rights legislation ever passed that covered the most number of people.

**Virginia Prescott:** [00:02:35] So how does it protect or provide for people with disabilities?

**Lennard Davis:** [00:02:40] There are several different areas that the Act covers. One is employment. In the area of employment, you can't be discriminated against for being a person with a disability if you're otherwise qualified for the job. In the areas of housing, education and public accommodations you can't be discriminated against. Barriers need to be removed and the world needs to be accessible. That's also true for public transportation as well as private transportation and railroads buses paratransit vehicles even taxis to some degree nowadays. So and then it also covers the area of telecommunications so that that people who are have hearing disability or visual disabilities can have equal access to a means of telecommunication. Those are the main areas that it covers.

**Virginia Prescott:** [00:03:34] Does the ADA specifically protect against abuses as well as upholding or enforcing protections?

**Lennard Davis:** [00:03:42] OK. This is an interesting question in terms of the way the law works.So unlike other laws there is no central bureau of disability protection where someone could go and complain about something that happened or didn't happen. And the only way that this law gets activated is by a lawsuit. But it has a cautionary effect. In other words if you're a business if you're a public accommodation owner of a movie theater you know that the building needs to be accessible and not just the building but whatever you, like in the case of a movie theater it needs to be accessible for hearing people, deaf people, or blind people. And if you don't do it you know that you run the risk of being sued. So even though not every single case involves a lawsuit the cautionary effect of the law in general is one that makes people understand that they need to provide accessibility and accommodation.

**Virginia Prescott:** [00:04:38] Can you give us more examples of that. What was life like for a person with a disability before the act.

**Lennard Davis:** [00:04:44] Well it depends on the disability but let's say you know for example imagine a world, and that world really existed say in the 1950s and 60s, if you were a wheelchair user for example. You know there were no curb cuts so you would if you were living at home you would have to go around the block maybe five or ten times without being able to cross the street

**Virginia Prescott:** [00:05:07] Because your chair couldn't. You couldn't go over the curb

**Lennard Davis:** [00:05:10] You couldn't go over the curb. But let's say you wanted to go to work you couldn't go to work because transportation was not accessible. So you basically couldn't work if you were a deaf person and my parents were both deaf so I remember this very well. There was no telephone service. You there was no way you could communicate with the world or with you. You know I remember as a kid that you know and people wanted to come and visit my parents they had to write a postcard and say when they were coming my parents had to write a postcard back and say okay that time is good. And then you had to wait for the person to show up because you know deaf people couldn't hear the bells. And so life was very limited and very prescribed for many many people with disabilities.

**Virginia Prescott:** [00:05:56] So tell us a little bit about the origins and who specifically was working to get this passed.

**Lennard Davis:** [00:06:02] One very important thing is that people who have disabilities in the past didn't necessarily see themselves as allied with other people who had disabilities. So if you were blind you had no natural inclination to team up with people who are a deaf. Or if you were a wheelchair user you didn't necessarily see yourself as linked up with someone who had depression. So what one of the first things that had to happen were the various disability groups had to come together into a meshed political entity that had some power. And that happened gradually over time and I detail it in the book. But probably the most important event were the demonstrations around Section 504 of the rehab Act. And Section 5 0 4 what you just need to know is that it was 44 words that somebody stuck into the bill and nobody knows who it was who stuck it in.

**Lennard Davis:** [00:06:52] That basically said that no otherwise qualified handicapped person should be discriminated against if they're otherwise qualified. So in doing that there were regulations written up and it took like seven years from Section 504 for the regulations to be passed. People with disabilities became very impatient. They began to protest. They occupied a federal building in San Francisco and other buildings around the country. And at the end of that point the regulations were passed. But it's a kind of watershed moment for disability activism. There was also other activism around transportation and there's a group called ADAPT which were sort of like the Hells Angels of the disability movement. They were you know guys and women would show up and they had you know they were dressed like Hell's Angels they were dressed like hippies they would chained themselves together to block buses that were inaccessible from going forward. And that group had a very big impact because transportation as I said before is a key issue especially if you have a mobility impairment. So there's a lot of political activity around, preceding the idea.

**Virginia Prescott:** [00:08:08] So there are a lot of movement for it. What were the arguments against the ADA?

**Lennard Davis:** [00:08:13] It's interesting who opposed it. Unlikely sources. Universities, churches and synagogues, and businesses.

**Virginia Prescott:** [00:08:22] On what grounds?

**Lennard Davis:** [00:08:24] Yeah they all had a big stake in keeping buildings the way they were.

**Lennard Davis:** [00:08:28] You know lots of money are spent with all of those organizations in terms of buildings that the churches wanted to keep the state out of it want to keep the separation between church and state and businesses were really you know annoyed about the fact that they would have to make structural changes and they and then possibly be sued if they didn't. And that was a big issue.

**Virginia Prescott:** [00:08:52] So structural changes like ramps for wheelchair accessibility bathrooms that accommodated in some cases I'm guessing signs in Braille that kind of thing?

**Lennard Davis:** [00:09:00] Yeah. And by the way even though the law exists there are still many places in the United States that are inaccessible in universities for example because the law carved out made carved out a remedy for if places had historical value. So I was just on a campus recently and a disabled student was saying she wanted to study chemistry there but couldn't get into the labs.

**Virginia Prescott:** [00:09:27] Were any special dispensations then made for those groups that oppose like churches synagogues universities?

**Lennard Davis:** [00:09:34] Yes, churches are carved out from the ADA, it does not apply to them.

**Virginia Prescott:** [00:09:37] So that's in terms of structure. What does that mean in terms of employment for example?

**Lennard Davis:** [00:09:42] Everything. They're completely carved out from the idea.

**Virginia Prescott:** [00:09:46] How did lawmakers at that time define disability, anything you know excluded from the disabilities covered under the act?

**Lennard Davis:** [00:09:54] Yeah. Those are two questions that are interesting. The definition in the original law turned out to be a big problem in court. So the original definition was what they called the three prong definition and it said that you had to be a person who had an impairment in one or more of life activities. That's how they defined disability, an impairment in one or more life activities. If you were, had a history of that but you no longer have that. And then the third prong is that if you are regarded as as having it.

**Lennard Davis:** [00:10:24] So let's say you didn't have a disability like if you let's say you were gay and you didn't have disability but you were assumed to have AIDS at the time. That would protect you under the Act. So there's those issues about how that are defined. What was carved out were any disabilities that were morally reprehensible particularly to certain senators like Jesse Helms. So anything to do with drug use, pedophilia, alcoholism any of the things that might be considered disability were not allowed in.

**Virginia Prescott:** [00:10:57] So the ADA covers both mental and physical disabilities, correct?

**Lennard Davis:** [00:11:01] That's correct.

**Virginia Prescott:** [00:11:03] And they don't have to be permanent is what I'm hearing from you.

**Lennard Davis:** [00:11:06] That's correct.

**Virginia Prescott:** [00:11:07] So did people with disability experience a change in their daily lives after the ADA passed?

**Lennard Davis:** [00:11:14] Yes I think so. I mean you know a number of the areas in order to get the bill passed there were lots of compromises made and some of them extended out five years 10 years when things would come into play. But basically the world has changed. I mean you know if you look around most buses and public transportation are accessible now, that was, and that was really fought by Greyhound for example who said that they would go out of business if they had to have lifts on their buses or kneeling buses. So yeah the world definitely has changed. I mean I think people now with disabilities feel confident in referring to referring to the law to provide them with access and accessibility. But you know there's an attitudinal issue that laws can't deal with and that has to do with shunning you know unconscious bias, a conscious bias that's not you know sort of detectable. Those are areas that are, a law can't really touch.

**Virginia Prescott:** [00:12:15] Well it's funny that you talked about previous legislation being for the handicapped and now we don't use that term anymore. We've changed the way that we talk about people with disabilities mental or physical disabilities. And you you wrote a book called Enforcing Normalcy. So how do you think the ADA has actually changed the way that disabled people are regarded in American culture?

**Lennard Davis:** [00:12:42] It's hard to say. You know I mean the more that laws are made that subsuste on accessibility the better that is. I mean but there's a backlash. You know I hear all the time people complaining particularly contractors about how they have all these regulations they have to do when they build new housing. Some see it as a good thing other people don't. So there can be resentment. There might be resentment for people who bring their dogs onto airplanes. There is, so some things have changed. I think we're, you know I think that a lot of that work can't be done by the law that it has to be done in the sociocultural context. We need to see more disabled people in important roles in TVs and movies that don't spotlight their disability particularly, they're just there they just happened to be there. You know people on their own need to be more open in terms of the friends that they have and the people that they feel comfortable or not comfortable with. And as I said that's something that a law can't touch.

**Virginia Prescott:** [00:13:42] All right so contractors having to deal with red tape in their words is one thing but how about for people with disabilities. Any complaints that there are downsides. I mean I've read things about their, say it's harder to get employed because employers think it costs more for example.

**Lennard Davis:** [00:14:01] That might be the case and then you know then then you would have to go to the EEOC or some agency and say that you believe that that happened, very hard to prove that. I think most people that I know who have disabilities are happy that the ADA is there. They don't see it as a magic bullet. They see it as you know the way some people have put it is look it doesn't change the vast structure of America. It just allows people with disabilities to be exploited in the same way that everybody else is.

**Virginia Prescott:** [00:14:32] The current administration has been focused on rolling back regulations on a lot of different fronts. Has that conversation touched the ADA and any indication it could be less stringent?

**Lennard Davis:** [00:14:42] Not only is it a hint a month ago Congress the House passed a bill H.R. 620 I believe which would roll back, what essentially would eviscerate the ADA. And this goes back to the issue about businesses. Businesses have always resented the fact that they could be sued and they've been trying to create a buffer. So that the law says essentially that a person who has been discriminated by a business like a hotel for example that doesn't have ramp would have to wait 120 days for the hotel to fix the problem and then if they didn't fix it they could bring a lawsuit. And this is friendly to the businesses but devastation to the law.

**Lennard Davis:** [00:15:25] Because remember when I was talking about the cautionary nature of the law which says you can be sued. This essentially is a get out of jail card. You know you now can you can remedy the situation so why bother fixing it. Luckily the Senate isn't going to support that law, but it's a matter of time because businesses do have this gripe about the ADA.

**Virginia Prescott:** [00:15:46] Lennard Davis pleasure speaking with you thank you very much.

**Lennard Davis:** [00:15:49] You're welcome.

**Virginia Prescott:** [00:15:50] Lennard Davis he's a Disability Studies specialist and author of several books including enabling acts the hidden story of how the Americans With Disabilities Act gave the largest U.S. minority rights. You can learn more about the way that the country defines and defends disability by subscribing to extra credit. That's our newsletter at Civics 101 podcast dot org and you can send us an e-mail or a voice memo asking your questions about the way that our democracy works or doesn't. That address again Civics 101 podcast. Org. This episode was produced by Hannah McCarthy. Our staff includes Ben Henry, Nick Capodice, Justine Paradise, Jimmy Gutierrez and Taylor Quimby. Erika Janick is executive producer. Music from Brooke for free. I'm Virginia Prescott civics 101 is a production of new Hampshire Public Radio.