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The UN Convention on the Rights of Persons with Disabilities : European and Scandinavian Perspectives

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Recension de Paula C. Pinto

Recension de livre • Book Review

The adoption of the UN Convention on the Rights of Persons with Disabilities (CRPD) in 2006 has undeniably become the watershed in disability politics at the beginning of the 21st century. This timely volume offers a collection of papers, which examining various aspects of the UN Disability Convention, provide a European and Scandinavian angles on the new treaty. These papers were originally presented at the Conference "The Human Rights of Persons with Disabilities : From Social Policy to Equal Rights", held in Reykjavík University in 2007. The volume comprises 12 chapters, organized into three distinct parts, which begin by addressing the transition from the social policy to the human rights approach in disability, move on to discuss the specificities of the European legal and policy context vis-a-vis disability rights, and finally explore possible implications of implementing the Convention at domestic level, in Nordic and European countries.

The first part deals with the often cited "paradigm shift" that the Convention is said to embody - a transition from a model organized around the provision of social welfare, in which persons with disabilities were mostly treated as objects of attention of professionals, families and policy-makers, to one that recognizes their indivisible and inalienable rights as legal subjects. Thus, the four chapters in this section, by Traustadóttir, Stein and Lord, Arnardóttir, and Koch, respectively, take readers through the theoretical foundations of a rights-based approach to disability. Whether discussing the international variants of the social model

(Traustadóttir), examining the substantive content of the CRPD (Stein and Lord), arguing for the indivisibility of all rights in the Convention (Koch) or elaborating on the principle of equality (Arnardóttir), these chapters provide an overview of the grounding themes and analytic concepts that inform and shape this Convention.

The second part of the volume focuses on the European legal and policy context to debate the potential for change that is contained in the CRPD, particularly in relation to instruments and mechanisms already in place in the region. It is important to note that this Convention is the first international human rights instrument that the European Community as a political body has negotiated and signed, and will likely ratify. Therefore, what will the catalytic impact of the CRPD be in legal development within the region, is the question that several authors try to address in this section. Right on Chapter Five, Lawson identifies some of these new contributions : a renewed emphasis on rights to participation, the centrality of the notion of reasonable accommodation to disability equality, and the extended scope of disability non-discrimination law. On Chapter Six, Waddington further elaborates on the topic, arguing that the act of signing and possibly ratifying the Convention "takes the European Community into new territory" (139). She foresees changes particularly in the domains of accessibility and transport, two areas where the Community has already taken steps, although others may also ensue. Finally, Björgvinsson, on Chapter Seven, and O'Conneide on Chapter Eight assess

the status of persons with disabilities in the European human rights system, particularly the European Convention on Human Rights (ECHR), the European Social Charter and the European Court of Human Rights, and draw a parallel between this and the CRPD. Björvinsson finds limitations in the ECHR to advance the rights of persons with disabilities, resulting from its major emphasis on civil and political rights. Persons with disabilities require supports and accommodation in order to access civil rights, a fact that is recognized in the UN Disability Convention but not in the ECHR. The European Social Charter, in turn, considers this interdependency but only to a limited degree. This may explain the historical marginalization of disability within the European human rights system - a situation that both authors hope to see reversed with the adoption of the CRPD and its forthcoming jurisprudence.

The final part of the book is concerned with translation of the Convention into domestic law. The opening chapter by Kallehauge outlines a program for implementation, identifying steps and key players. Gerard Quinn in Chapter 10 recaptures the theme of the impact of the Convention with a novel twist - this time a focus on monitoring mechanisms and processes, and their potentially "persuasive" and "socializing" effect on State Parties. Finally, Flóvenz (Chapter 11) and Helgadóttir (Chapter 12) dwell on Nordic case law - the first to examine the connection between the implementation of the CRPD and the interpretation of civil and political rights on one hand, and social, economic and cultural rights on the other; the second, to predict how the CRPD will be applied in the domestic courts of Iceland, Norway and Denmark. In both, the general tone is one of moderate confidence and optimism. As they argue, positive prospects for people with disabilities can be expected when the Convention is implemented, and the overarching principles of non-discrimination (Flóvenz) and equality (Helgadóttir) that it contains are made explicit and upheld in the courts.

On the whole, this volume is a welcome addition to disability legal studies. It provides a thorough examination of the Convention and lays

the ground for legal development and policy practice at domestic level that will give expression to the principles and goals of the new Convention. Despite the unquestionable relevance of the topic, there are, nevertheless, some pitfalls in the approach that has been followed. This is a book written by scholars, and targeted at an academic audience. While some of the authors are themselves persons with disabilities or parents, the voices of the disability movement are entirely missing. It would have been relevant (and certainly in conformity with the spirit of the Convention) to include the perspective of national and international disabled people's organizations in this book, a par with those of the academics. Moreover, the language and style used are often dense and challenging, raising questions about the accessibility of the text to a wider audience. It may be argued that such was not the original intention but it seems to me that given how important it remains to inform people with disabilities and their organizations about the CRPD, to support their efforts in using the Convention in struggles for recognition of rights, this is not a negligent concern. A final word should be said about the scope of the work. While it is certainly a legitimate choice to focus attention in Europe and Scandinavia in this volume, the reader is left wondering about the rest of the world. Hopefully, others will be stimulated by this volume to take up a similar challenge - this time to reflect and write on the Convention from the perspective of remaining regions of our globe.

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