

Understanding the Intersection Between International Human Rights and Mental Disability Law: The Role of Dignity

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“Traditionally, disability has not been regarded as a human rights issue” (Lawson, 2006, p. 462; see also, Lord, 2004). As recently as 17 years ago, it was not so broadly acknowledged (Rosenthal & Rubenstein, 1993). Although there had been prior cases decided in the United States and in Europe that, retrospectively, had been litigated from a human rights perspective, the characterization of "disability rights" (especially the rights of persons with *mental* disabilities) as a social issue was not discussed in a global public, political or legal debate until the early 1990s. Instead, disability was seen only as a medical problem of the individual requiring a treatment or cure. By contrast, viewing disability as a human rights issue requires us to recognize the inherent equality of all people, regardless of abilities, disabilities, or differences, and obligates society to remove the attitudinal and physical barriers to equality and inclusion of people with disabilities (See Perlin et al. 2006; see also, Jones & Marks, 1999; Hendricks & Degener, 1994; Lawson, 2006). The ratification of the United Nations Convention on the Rights of Persons with Disabilities forces us to restructure our views of the rights of this population, and requires us to come to grips with a history of mistreatment, stigmatization and marginalization.

My new book, *INTERNATIONAL HUMAN RIGHTS AND MENTAL DISABILITY LAW: WHEN THE SILENCED ARE HEARD* (Oxford University Press, 2011), seeks to this, and specifically focuses on the important issue of dignity in this context. As ratified, the Convention calls for “respect for inherent dignity” (Article 3(a)). The Preamble characterizes “discrimination against any person on the basis of disability [as] a violation of the inherent dignity and worth of the human person....” (para. h.). And these provisions are consistent with the entire Convention’s “rights-based approach focusing on individual dignity” (Dhir, 2005, p. 195), placing the responsibility on the State “to tackle socially created obstacles in order to ensure full respect for the dignity and equal rights of all persons” (Quinn & Degener, 2002, p. 14). Prof. Michael Stein puts it well this way: A “dignitary perspective compels societies to acknowledge that persons with disabilities are valuable because of their inherent human worth” (Stein, 2007, p. 106). In Prof. Cees Maris’s summary: “The Convention's object is to ensure disabled persons enjoy all human rights with dignity” (2010, p. 1156).

I conclude my subchapter that is devoted to these issues in this way:

The test of whether the CRPD will have authentic meaning or will be little more than a “paper victory” (see Perlin, 2009, p. 490) will be whether, as a result of the ratification of the Convention, persons with mental disabilities – especially *institutionalized* persons with mental disabilities – are, in fact, treated with that level of dignity that they are owed as a key component of international human rights law. As of the writing of this manuscript, it is far too early to come to any conclusions on this point, but the question is the one that will be before us for the indefinite future.

This will be the focus of my presentation.