



ISSN: 2036-5438

# Federalism and the Rights of Persons with Disabilities: An Introduction to the Symposium

by

Delia Ferri, Francesco Palermo and Giuseppe Martinico<sup>1</sup>



## Abstract

The aim of this article is to offer an introduction to the Symposium devoted to *Federalism and the Rights of Persons with Disabilities. The Implementation of the CRPD in Federal Systems and Its Implications* edited by Delia Ferri, Francesco Palermo and Giuseppe Martinico and published by Hart Publishing in 2023.

## Key-words

Disability, Federalism, Convention on the Rights of Persons with Disabilities (CRPD), Comparative Law



## 1. The Idea Behind the Volume

*Federalism and the Rights of Persons with Disabilities* is an ambitious book, which represents a starting point to embolden legal academics to abandon inward-looking approaches on the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD) and embrace the critical potential of comparative federalism. At the same time, it invites comparative federalism scholars to look at the effects on federal systems through the lenses of specific policies and rights, especially recent and less considered ones, like disability rights.

The idea to publish this book arose in 2021, fifteen years after the adoption of the CRPD, together with its Optional Protocol (OP-CRPD) at the UN, and ten years after the ratification of the CRPD by the European Union (EU). At such a critical juncture, as editors, we felt it was important to use comparative federalism literature to advance the state of knowledge on the implementation of the CRPD in multi-level systems. In fact, we felt that comparative federalism can contribute to reflecting on the different qualities that rulemaking in national and subnational entities may display in the protection and promotion of fundamental rights, including ‘newer’ ones such as disability rights. In this regard the book aligns and tallies with the more recent general acknowledgement that ‘[c]omparative transnational study is of relevance in shedding light on the evolution, implementation and monitoring of global disability standards’ (Broderick, 2023).

So far, while the relation between federalism and fundamental rights has traditionally been all but straightforward, oscillating between highlighting historical experiences of abuse of subnational powers to limit rights (especially in the US) and acknowledging the potential of federalism to better protect them (Schapiro, 2009), the specific case of the rights of persons with disability is still under-researched. Furthermore, the scant scholarship on the inter-relation between federalism and disability law for the most predates the CRPD and is characterised by the lack of a human-rights approach to disability (Cameron and Fraser 2011; Prince 2001). Current research on the CRPD focuses on the Convention as a core human rights treaty, (Bantekas, Stein and Anastasiou 2018) within the broader realm of international human rights law (de Beco 2021; Blanck and Flynn 2017; de Beco 2019; Kakoullis and Johnson 2020). Disability law scholars have also investigated how the obligations set out in the CRPD have been fulfilled by selected State Parties in distinct domains, such as, inter alia, education (de Beco, Quinlivan and Lord 2019; Biermann 2022), or mental health (Weller



2013). In that connection, several contributions have analysed changes in policymaking and legislative advancements driven by the Convention (de Beco 2013; Ferri and Broderick 2020). Other scholarly work has discussed the extent to which the CRPD can act as a driver to improve the lives of people with disabilities (Flynn 2011). Comparative work on the implementation of the CRPD by domestic courts has been edited by Waddington and Lawson (Waddington and Lawson 2018). However, very little research has been undertaken on the impact that the CRPD has had on constitutional structures and, even less so, on the division of powers in federal systems.

Legal research has increasingly discussed not only the normative content of the CRPD itself, but also its domestic implementation, either focusing on distinct rights provided for in the Convention or presenting country case studies. Scholars have often engaged in vertical comparison between the CRPD and national law, encompassing some sort of compliance analysis. Horizontal comparisons across the CRPD, international and regional legal instruments have also gained momentum. Almost no attention has been paid to the potential that federal arrangements can display in the implementation of disability rights, in facilitating matching of citizen preferences, accommodating diversity, leading to more efficient policy outcomes. By contrast, the somewhat recurrent lament about the complexity of implementing the CRPD in federal countries, the growing disappointment with the patchy realisation of disability rights in highly decentralised countries, often disguises an undertone of dissatisfaction about decentralisation and federalism themselves, as it emerges from the present study. Nothing in this volume proves that a federal system *per se* is an obstacle to the proper implementation of the obligations under the CRPD. Such obstacles can be rather found either in the unsatisfactory functioning of the multi-layered governance as a whole, or in the problematic approach to (certain) rights laid down in the Convention, but not in the combination ‘federal system – CRPD’. To the contrary, the effects of the CRPD on federal structures has been as indirect and ‘unaware’ as it has been *de facto* centralising the division of powers. This book has filled a gap in current literature and tendered an analysis of the implications of the CRPD in federal countries, bringing federalism front and centre of each chapter. The comparative method has then been the key to gauge the potential of the CRPD to affect constitutional structures, and its actual effects on the sharing of competences in federal countries which present a multi-layered governance of disability issues.



## 2. A Human Rights Approach to Disability

The volume is informed and underpinned by a human rights approach to disability, and recognises that the CRPD is *the* global standard on disability rights. In doing so it rejects a medical conception of disability, and the idea of disability as mere individual deficit, deriving from a disease hampering the physiological or cognitive functioning (Drum, 2009). This ‘medical model’ of disability, which considered people with disabilities unable to participate in society as the result of their own impairments, began to be confronted by disability activists in the 1960s, both in the US (Blanck, Waterstone and Myhill 2014; Pelka 2012; Charlton 1998; Zola 1982; Davis 2015) and in the United Kingdom (Meekosha and Jakubowicz 1999). In the 1970s, the British Union of Physically Impaired Against Segregation (UPIAS) elaborated the idea that society disables people with impairments.<sup>ii</sup> Michael Oliver, a UK disabled academic, further expounded a conception of disability as a societal construction, currently termed the ‘social model of disability’ (Oliver 1996). The ‘social model of disability’, its numerous academic elaborations (Barnes 2016) and critical accounts (Shakespeare 2006; Morris 1991) have stimulated the international development of disability rights as a key element of the UN work (Kanter 2017; Ferri, Broderick and Leahy, 2024 forthcoming) and informs the content of the CRPD.

From 1970 to 1980, according to Degener and Begg, persons with disabilities became recognised as ‘subjects of rehabilitation’ (Degener and Begg 2017), whilst tentative signs of a rights-based approach to disability became evident, for example, in the Declaration on the Rights of Disabled Persons.<sup>iii</sup> Degener and Begg note that, from 1980 to 2000, persons with disabilities became ‘objects of human rights’ (Degener and Begg 2017), and the 1993 (non-binding) Standard Rules on the Equalization of Opportunities for Persons with Disabilities<sup>iv</sup> represented a momentous political commitment to realising equality for persons with disabilities. The new millennium represented a crossroads, in that ‘international disability policy became a rights-based policy’ (Degener and Begg 2017), and a binding treaty to ensure equal rights to persons with disabilities was indicated as the key objective to be achieved. An Ad Hoc Committee was set up in December 2001 by the UN with the mandate to draft a comprehensive international convention.<sup>v</sup> This Ad Hoc Committee released the text of the CRPD, which, as mentioned above, was formally adopted by the UN on 13 December 2006, entering into force on 3 May 2008.



The CRPD is the first international human rights treaty that seeks to ensure the protection and promotion of the rights of persons with disabilities on an equal basis with others. It does not aim to create new rights, but it ‘extends existing human rights to take into account the specific experience of persons with disabilit[ies]’ (Mégret 2008). With its Preamble, which is quite long and detailed, and fifty articles, it ‘[forges] new ground and requires new thinking’ (Pillay 2014). The transformative potential of the CRPD is linked to the fact that it recasts disability as a social construct. In doing so, the Convention focuses on the removal of barriers to ensure the equal exercise and enjoyment of rights by persons with disabilities and their full participation in society. In fact, Article 1 CRPD acknowledges that ‘disability results from the *interaction* between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others’ (emphasis added).<sup>VI</sup> Notably, Article 1 CRPD allows for a dynamic approach that can facilitate adaptations over time and in different socio-economic settings, and does not set forth any distinction between different categories of disability.

The novelty of the CRPD also arises from the embedment of the ‘human rights model of disability’, which has been elaborated by Degener (Degener 2017). Such model as mentioned underpins the overall volume. Without engaging in a thorough discussion of this model, it suffices here to recall some of its core features. Degener argues that this model emphasises the human dignity of persons with disabilities, and ‘encompasses both sets of human rights, civil and political as well as economic, social and cultural rights’ (Degener 2017). She suggests, *inter alia*, that the human rights model values impairments as part of human diversity, paying attention to intersectional discrimination. Further, the human rights model ‘offers room for minority and cultural identification’ (Degener 2017).

Alongside being underpinned by the human rights model of disability, the volume on the whole and each chapter focus on selected areas that correspond to key principles of the CRPD: Non-Discrimination and Equality, Accessibility and Participation. Notably, the principle of non-discrimination has been described as the ‘leitmotif’ of the CRPD (Arnardóttir 2009), as it cuts across both civil and political rights, such as the right to legal capacity, and economic, social and cultural rights, such as the right to education. Article 2 CRPD provides a broad definition of discrimination on the ground of disability, stating that such discrimination comprises the denial of reasonable accommodation, whereby reasonable accommodation is any ‘necessary and appropriate modification and adjustments’, ‘where





needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms'. The duty to provide reasonable accommodation must be distinguished from accessibility, which, as noted above, is another core principle of the Convention.

Article 9 CRPD on accessibility requires States Parties to take appropriate measures to ensure that people with disabilities have access to environments, facilities, information and services on an equal basis with others. Accessibility duties are generalised and group-based, as well as anticipatory (*ex tunc*).<sup>VII</sup> Moreover, Article 4(1) CRPD includes an array of obligations that are linked to the realisation of the principle of accessibility. These encompass the duty to engage in or promote the research and development of new technologies<sup>VIII</sup> and the requirement for States Parties to provide accessible information.<sup>IX</sup> The CRPD Committee identifies accessibility as an essential 'precondition' for the enjoyment of other human rights and as 'a means to achieve *de facto* equality for all persons with disabilities'.<sup>X</sup>

The principle of participation and inclusion of people with disabilities in society is also a core feature of the Convention. In fact, the CRPD requires the involvement of persons with disabilities in society, and in all spheres of policymaking.<sup>XI</sup> Ensuring participation of persons with disabilities is particularly important for fostering awareness-raising and promoting respect for the rights and dignity of persons with disabilities.<sup>XII</sup>

These normative principles of non-discrimination and equality, accessibility, and participation as well as the key quest for respect of the inherent dignity of persons with disabilities converge in the concept of inclusive equality, which is embodied by the CRPD. This concept, which is said to go beyond that of substantive equality,<sup>XIII</sup> embraces four intertwined dimensions: a fair *redistributive* dimension, which refers to the need to address socioeconomic disadvantages; a *recognition* dimension, which requires the combatting of stigma and recognition of dignity and intersectionality; a *participative* dimension, which necessitates the recognition of the social nature of people with disabilities as members of society; and an *accommodating* dimension, which entails making space for difference as a matter of human dignity.<sup>XIV</sup>

Notably, the volume does not endeavour to cover the implementation of each article of the CRPD. Articles 10 through 30 CRPD, which enumerate specific rights that the Convention promotes and protects and encompass civil, political, economic, social and cultural rights, are however often recalled through the analyses. Notably, among these



provisions, central to the CRPD is the right of persons with disabilities to legal capacity (i.e. the capacity to be a holder of rights and the capacity to act under the law) enshrined in Article 12 (de Bhailís and Flynn 2017), which the chapters of the volume recall at various junctures. This Article also imposes on States Parties the obligation to provide persons with disabilities with adequate supports in the exercise of their legal capacity, in order to enable them to make decisions that have legal effect. Support provided in the exercise of legal capacity must respect the rights, will and preferences of a person with a disability, and it should never amount to substitute decision-making.<sup>xv</sup> While Article 12 has been quite ‘controversial’ (Scholten and Gather 2018; Pearl 2013), it has also been deemed revolutionary in that it challenges the traditional approaches to legal capacity and guardianship systems (Cuenca Gómez, del Carmen Barranco Avilés, Serra, Ansuátegui Roig and Rodríguez del Pozo 2017). Closely related to Article 12 is Article 19 CRPD, which contains the right to live independently and be included in the community, prohibiting institutionalisation and segregation of persons with disabilities. In particular, although not exclusively, Article 24 on the right to education, Article 25 on the right to health, Article 27 on the right to work, Article 28 on the right to social protection and Article 30 CRPD on the right to participation in cultural life, place, to different degrees, a focus on the inclusion and participation of persons with disabilities in society. Kayess and French suggest that these provisions oblige States Parties to incorporate ‘disability sensitive measures into mainstream service delivery’ and to ensure ‘the provision of necessary specialist services and special measures in a manner that facilitates the inclusion and participation of persons with disability within the general community’ (Kayess and French 2008).

In dealing with the CRPD implementation, we as editors, as well as authors have been mindful of the traditional distinction between rights that are subject to immediate implementation (i.e. civil and political rights) and those that are to be realised progressively (i.e. economic, social and cultural rights), a distinction that Article 4(2) CRPD reiterates. However, as argued by Stein (Stein 2007), the CRPD blurs the distinction between these traditional categories of rights and has ‘compounded the different categories of rights’ throughout its provisions (de Beco 2019).





### 3. The Implementation of the CRPD and Its Complexities

Overall, the CRPD can be considered ‘the single most exciting development in the disability field in decades’ (de Bhailís and Flynn 2017) and a ‘catalyst for change’ (Arbour 2006). To effect that change, the CRPD itself recognises that implementation and monitoring are essential. In this regard the volume does pay particular attention to these aspects, and reflects on the need to adapt implementation and monitoring systems to constitutional structures without undermining the Convention’s values and effects.

States Parties to the CRPD are required to adopt legislative, administrative, financial, judicial and all other necessary measures to ensure the realisation of the object and purpose of the CRPD. They must review and amend national laws and policies to ensure compliance with the Convention. Article 4(1)(c) CRPD requires that States Parties mainstream disability in all their policies, and Article 4(1)(d) CRPD obliges States Parties to ensure that public authorities and institutions act in compliance with the Convention. As it is typical for international treaties, there are no specific references in these provisions to the role of the national and subnational levels of governments. Also, there is no definition of ‘public authorities and institutions’ in the CRPD itself, as these will be identified at the domestic level, in light of the constitutional arrangements of that country, following the still predominant ‘federal blindness’ approach of international law (Ipsen 1966). However, those provisions must be read in conjunction with Article 4(5) CRPD, which affirms that the obligations laid out in the Convention ‘extend to all parts of federal States without any limitations or exceptions’. The latter norm is designed to ensure that both subnational and federal authorities fulfil their implementation obligations under the Convention.

The CRPD, as with other international treaties, includes a specific Regional Integration Organisation clause (RIO clause) specifically aimed at accommodating the European Union’s (EU) peculiar legal nature and allowing it to ratify the Convention. While the division of powers which is internal to a federal state remains entirely a domestic matter, the sharing of competences between the EU and its Member States acquires relevance, but only in the context of international responsibility.<sup>xvi</sup>

Notably, the CRPD recognises that the full realisation of human rights depends on appropriate governance mechanisms. It obliges States Parties to put in place structures at the domestic level with a view to facilitating the implementation of the Convention and to



monitoring such implementation. Article 33 CRPD sets forth the obligations to: designate one or more focal points to implement the CRPD (Article 33(1) CRPD); give due consideration to the establishment of a mechanism to coordinate the implementation process (Article 33(1) CRPD); and put in place a structure to protect, promote and monitor the implementation of the Convention (Article 33(2) CRPD). In addition, Article 33(3) CRPD requires States Parties to involve civil society, in particular Disabled People's Organisations (DPOs) in monitoring processes. Quinn suggests that Article 33 in its entirety is a key innovation, with the potential to transform the 'majestic generalities' of the Convention into concrete reform at the domestic level (Quinn 2009).

The focal point must be set up within the government for matters relating to the implementation of the Convention and resources must be allocated to carry out its function and collaborate with persons with disabilities.<sup>xvii</sup> However, Article 33(1) CRPD leaves a margin of discretion to the State Party on whether to create a single focal point or multiple focal points (both horizontally – by creating multiple focal points in the national government and vertically – by creating focal points at the subnational level), although Manca suggests that, during the negotiations on the CRPD, a strong preference for multiple focal points was expressed (Manca 2017). Aichele even maintains that Article 33 CRPD could be read as imposing an obligation on federal states for each of the governments to have a focal point (Manca 2017). In fact, during the drafting process, federal states had 'pointed out that it would be in the interests of their regions to be equipped with focal points that would enable them to ensure their inner sovereignty' (Aichele 2018).

Article 33(1) CRPD also requires States Parties to 'give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels'. The establishment or designation of a coordination mechanism is not a legal obligation, however, and the distinction between the functions of the focal point and the coordination mechanism remains vague and blurred. Nonetheless, in decentralised states, the establishment of the coordination mechanism should be of vital importance to ensure the smooth implementation of the Convention across different levels of government. In that regard, taking into account previous research (de Beco 2013), this volume investigates whether traditional institutional forms of territorial participation have been replicated into the focal point, and whether the coordination mechanism in Article 33 CRPD acts as a 'transmission belt' between the national and the



subnational entities' governments.

It is evident that the CRPD necessitates States Parties to intervene on their governance structures. By including provisions such as Article 4(5) and Article 33(1), the drafters of the CRPD were somewhat mindful of the particular challenges that the implementation of the CRPD brings about in federal systems, where competences on pivotal areas, such as e.g. accessibility, are shared between national and subnational levels. However, these provisions have not prevented gaps in the implementation. Furthermore, a lack of coordination has progressively emerged in federal systems and has been highlighted by the CRPD Committee in its Concluding Observations on States Parties reports. A recent report, written by Woodin for the European Blind Union, indicates the lack of coordination as an issue in some of the federal countries examined. A shortage of coordination efforts between cantons was reported with regard to Switzerland, while in Belgium the 'complexity of governing arrangements made effective participation [of persons with disabilities] problematic'. In a more general fashion, '[l]ack of coordination was evident, where not enough focal points were present at the various levels of government or across ministries' (Woodin 2019).

Article 33(2) CRPD obliges States Parties to create 'a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation' of the Convention. What may constitute a framework is not defined in Article 33(2). Nevertheless, this provision requires States Parties to designate or establish one or more bodies as part of the framework (Woodin 2019). The framework should include 'one or more independent mechanisms' that comply with the '[p]rinciples relating to the Status of National Institutions for the Promotion and Protection of Human Rights (NHRIs)' (also known as the Paris Principles<sup>xviii</sup>), which sketch out the responsibilities, composition and working methods of NHRIs, placing emphasis on independence and pluralism. The responsibilities of the independent mechanisms within the framework include: awareness-raising activities to ensure that a human rights approach to disability is adopted; the power to deal with individual claims related to violations of the rights provided for in the CRPD; and the assessment of the extent to which the CRPD has been effectively implemented.

As noted above, Article 33(3) CRPD establishes that 'civil society, in particular persons with disabilities and their representative organi[s]ations, shall be involved and participate fully in the monitoring process'. This provision tallies with Article 4(3) CRPD which requires in a general fashion close consultation with, and active involvement of, disabled people,



through their representative organisations, in the development and implementation of legislation and policies and in all decision-making processes concerning issues relating to persons with disabilities. These norms are considered to stem from the participatory process that characterised the negotiation of the CRPD and reflect the slogan of the disability rights movement ‘Nothing About Us Without Us’. On the whole, the CRPD demonstrates that the full realisation of human rights of persons with disabilities only passes through a participatory approach to implementation and monitoring.

#### **4. Deploying a Comparative Federalism Perspective: Case Selection and Challenges**

As noted at the outset of this article, this volume does not intend to replicate existing academic work on the implementation of the CRPD. Rather, it aims to focus on the effects of that implementation on federal structures and powers. With that in mind, the volume includes a range of chapters on selected countries, which are considered as representative test studies. Those countries have been selected on the basis of three criteria, deploying what Hirschl defines ‘inference-oriented research design and case selection’ (Hirschl 2005). First, we looked at the ratification date of the CRPD, with the aim of including States Parties that ratified the CRPD at least ten years ago, in order to be able to evaluate trends in the implementation of the CRPD across a relatively long timespan. The deployment of this criterion led us to immediately exclude the US, which to date has not ratified the CRPD. Secondly, we included countries that can be qualified as federal systems adopting a broad and functional understanding (Palermo and Kössler 2017), i.e. countries with at least two tiers of government, where division of legislative powers is constitutionally guaranteed. Finally, we included countries for which there is preliminary evidence of complexities in the implementation of the CRPD, signalled by the CRPD Committee in their Concluding Observations, by literature, as well as by DPOs’ reports. Furthermore, the volume embraces a global approach by looking at countries from different geographical areas, including countries that belong to what is often termed the ‘Global South’, even though it does not engage directly with the academic discourse related to development and disability. It also ensures a balance when it comes to the nature of the legal system: the volume in fact includes countries with a common law tradition, such as India and the United Kingdom, and States



that are usually qualified as responding to a civil law tradition. Further, it encompasses jurisdictions with diverse approaches to international law, i.e. traditionally monist or dualist or characterised by a mixed approach.

On the basis of the criteria indicated, the countries selected are: Austria, Belgium, Germany, Italy, Spain, the UK, the EU, Canada, Mexico, Brazil, Argentina, India, South Africa, Ethiopia. Despite the global reach of the book, we recognise that the somewhat predominant focus on European countries might be perceived as a drawback. However, this is justified due to their comparative relevance for the issue at stake. Not only is Europe a region with a high number of federal systems, but it has also dedicated significant attention to disability policies. Therefore, the interplay between federalism and disability law is of special evidence in the European continent.

Even though, as noted above, the peculiar and non-state legal nature of the EU is actually recognised by the CRPD, by virtue of the RIO clause, the volume deliberately chooses to include the EU as a case study. It does so on the basis of a wealth of literature that has analysed the process of European integration through the lens of federalism (Burgess 2006). Furthermore, a chapter on the EU supports and enriches the comparative analysis, as well as the functional approach to federalism.

On foot of such comparative research design, the selected case studies have been grouped and presented in the book following both a geographic and a comparative logic. The first part is devoted to European cases, including the EU which, as a *sui generis* (federal) system, is placed in the beginning, for reasons of both content (its ratification of the CRPD) and method (it proves that the federal toolkit operates also in non-state organisations). After the chapter on the EU, authored by Ferri and Šubic, the other European examples are ordered by the historical duration of the federal experience. The chapter on Germany (Welti), is followed by chapters on Austria (Bußjäger), Italy (Addis and Monti), Spain (González Pascual) and Belgium (Ghys, Louckx and Dumont). A chapter on the UK, by McCall-Smith, closes this initial part on European examples. Notably, the UK, while no longer a member of the EU, was part of it at the time of the ratification of the CRPD and has a long-standing disability policy revolving around the Equality Act 2010, and for this reason it is included instead of Switzerland. The order also follows a historical evolution of the federal systems from traditional, coming-together federations to more recent, holding-together federal and regional systems, as well as from more symmetric to more asymmetric status and powers of





the subnational units.

The second part looks at non-European federal countries, grouped along a scale based on the different legal traditions: from predominantly common law (Canada) to common law with elements of traditional law (India), common law with Roman-Dutch (*sui generis* civil law) elements (South Africa) and a mix of different legal traditions (Ethiopia). Those chapters (authored respectively by Beaudry, Dhanda, Chigwata and Nanima, and Fessha and Dessalegn) are followed by a final group that focuses on Latin American federal systems. In this part, Bariffi discusses the Argentinian experience, Rodrigues and Breit examine how Brazilian federalism deals with the CRPD, while Spigno focuses on Mexico. Although the legal tradition does not seem to have played a significant role in determining the relationship between federalism and the rights of persons with disabilities, some pre-legal, predominantly cultural factors have, and this makes it useful to have a certain *fil rouge* in the presentation of the cases.

A comparative chapter written by the editors completes the book by elaborating on the findings of the case studies examined in the previous chapters. It explores trends and patterns in the implementation of the CRPD. In doing so, it endeavours to further clarify, by means of comparative analysis, the role of the CRPD in engendering, provoking dynamics of centralisation or decentralisation. It investigates the manner in which the general principles of the CRPD interact with federal arrangements.

A short concluding chapter closes this edited collection with a brief discussion on the intersection between disability and federalism studies. It highlights likely future developments on the extent to which comparative federalism can enhance the promotion of the rights of persons with disabilities. Notably, the last chapter highlights that this volume only represents a new step in the still little explored field of the intersection between federalism and disability law, and further research is necessary to cast new light on and investigate this topic. In doing so, it calls for a renewed commitment and joint forces among scholars in disability law and comparative federalism for new endeavours to bring forward the research conducted in this volume.

---

<sup>1</sup> Giuseppe Martinico, Full Professor of Comparative Public Law, Scuola Superiore Sant'Anna, Pisa. Email: [giuseppe.martinico@santannapisa.it](mailto:giuseppe.martinico@santannapisa.it).

Francesco Palermo, Full Professor of Comparative Public Law at the University of Verona and Director of the Institute for Comparative Federalism at Eurac Research in Bolzano/Bozen. Email: [francesco.palermo@eurac.edu](mailto:francesco.palermo@eurac.edu)





Delia Ferri, Professor of Law, Maynooth University, Ireland. Email: [delia.ferri@mu.ie](mailto:delia.ferri@mu.ie)

<sup>II</sup> Union of Physically Impaired Against Segregation (UPIAS), *Fundamental Principles of Disability* (The Disability Alliance, 1976) 4.

<sup>III</sup> UN Declaration on the Rights of Disabled Persons, 09 December 1975, UN General Assembly (UNGA) Resolution 3447.

<sup>IV</sup> UNGA, 'UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities', Resolution 48/96, Annex of 20 December 1993.

<sup>V</sup> The General Assembly renewed the mandate of the Ad Hoc Committee four times from 2002 to 2005 (Resolutions 57/229 of 18 December 2002, 58/246 of 23 December 2003, 59/198 of 20 December 2004, and 60/232 of 23 December 2005).

<sup>VI</sup> See also Preamble para (e) CRPD.

<sup>VII</sup> CRPD Committee, 'General Comment No. 2 on accessibility' (2014) CRPD/C/GC/2; See also CRPD Committee, 'General Comment No. 6 on equality and non-discrimination' (2018) CRPD/C/GC/6, paras 23 *et seq.*

<sup>VIII</sup> Article 4(g) CRPD.

<sup>IX</sup> Article 4(h) CRPD.

<sup>X</sup> CRPD Committee, 'General Comment No. 5 on living independently and being included in the community' (2017) CRPD/C/GC/5, para 40.

<sup>XI</sup> CRPD Committee, 'General Comment No. 7 on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention' (2018) CRPD/C/GC/7.

<sup>XII</sup> *Ibid*, para 76.

<sup>XIII</sup> CRPD Committee, 'General Comment No. 6'; See also Degener and Uldry, 2018.

<sup>XIV</sup> CRPD Committee, 'General Comment No. 6', para 11.

<sup>XV</sup> CRPD Committee, 'General Comment No. 1 Article 12: Equal recognition before the law' (2014) CRPD/C/GC/1, para 17.

<sup>XVI</sup> On RIO clauses and Declaration of Competences, see *inter alia* Delgado Casteleiro 2012.

<sup>XVII</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), 'Thematic study by the Office of the United Nations High Commissioner for Human Rights on the structure and role of national mechanisms for the implementation and monitoring of the Convention on the Rights of Persons with Disabilities' (2009) A/HRC/13/29.

<sup>XVIII</sup> Annex to the UN General Assembly, 'National institutions for the promotion and protection of human rights' (1993) A/RES/48/134. The Paris Principles provide a short set of minimum standards for National Human Rights Institutions (NHRIs), organised under four headings: 1. Competence and responsibilities; 2. Composition and guarantees of independence and pluralism; 3. Methods of operation; 4. Additional principles concerning the status of commissions with quasi-[judicial] competence.

## References

- Aichele Valentin, 2018, 'Article 33 National Implementation and Monitoring' in I. Bantekas, M.A. Stein, D. Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary*, Oxford University Press, Oxford
- Arbour Louise, 2006, 'Statement by Louise Arbour UN High Commissioner for Human Rights on the Ad Hoc Committee's Adoption of the Convention on the Rights of Persons with Disabilities', United Nations Publications, New York
- Arstein-Kerslake Anna, 2017, *Restoring Voice to People with Cognitive Disabilities. Realizing the Right to Equal Recognition before the Law*, Cambridge University Press, Cambridge
- Bantekas Ilias, Stein Michael Ashley and Anastasiou Dimitris, 2018, *The UN Convention on the Rights of Persons with Disabilities: A Commentary*, Oxford University Press, Oxford
- Barnes Elizabeth, 2016, 'Constructing Disability' in E. Barnes, *The Minority Body: A Theory of Disability*, Oxford University Press, Oxford



- Biermann Julia, 2022, *Translating Human Rights in Education: The Influence of Article 24 UN CRPD in Nigeria and Germany*, University of Michigan Press, Ann Arbor
- Blanck Peter, Waterstone Michael and Myhill, William N., 2014, *Disability Civil Rights Law and Policy: Case and Materials (3rd edn)*, West Academic Publishing, St. Paul, MN
- Blanck Peter and Flynn Eilionóir (eds), 2016, *Routledge Handbook of Disability Law and Human Rights*, Routledge, London
- Broderick Andrea and Ferri Delia, 2019, *International and European Disability Law. Text, Cases and Materials*, Cambridge University Press, Cambridge
- Broderick Andrea, 2015, *The Long and Winding Road to Equality and Inclusion for Persons with Disabilities*, Intersentia, Antwerp
- Broderick Andrea, 2023, 'Disability Law' in J.M. Smits, J. Husa, C. Valcke and M. Narciso (eds), *Elgar Encyclopedia of Comparative Law*, Edward Elgar, Cheltenham
- Burgess Michael, 2006, *Comparative Federalism: Theory and Practice*, Routledge, London
- Cameron David and Fraser Valentine (eds), 2001, *Disability and Federalism: Comparing Different Approaches to Full Participation*, Institute of Intergovernmental Relations, Kingston
- Celik Elif, 2017, 'The Role of CRPD in Rethinking the Subject of Human Rights', *The International Journal of Human Rights*, Vol. 21, pp. 933-995
- Charlton James I., *Nothing About Us Without Us: Disability Oppression and Empowerment*, University of California Press, Oakland
- Cuenca Gómez Patricia, Barranco Avilés María del Carmen, Serra María Laura, Ansuátegui Roig, Francisco Javier and Rodríguez Del Pozo Pablo, 2017, 'The Impact of Article 12 of the Convention on the Rights of Persons with Disabilities on Qatar's Private Law', *The Age of Human Rights Journal*, pp. 81-104
- Davis Lennard J., 2015, *Enabling Acts: The Hidden Story of How the Americans with Disabilities Act Gave the Largest US Minority Its Rights*, Beacon Press, Boston
- de Beco Gauthier (ed), 2013, *Article 33 of the UN Convention on the Rights of Persons with Disabilities: National Structures for the Implementation and Monitoring of the Convention*, Martinus Nijhoff Publishers, The Hague
- de Beco Gauthier, 2019, 'The Indivisibility of Human Rights and the Convention on the Rights of Persons with Disabilities', *International & Comparative Law Quarterly*, Vol. 68, pp. 141-160
- de Beco Gauthier, 2021, *Disability in International Human Rights Law*, Oxford University Press, Oxford
- de Beco Gauthier, Quinlivan Shivaun and Lord Janet E. (eds), 2019, *The Right to Inclusive Education in International Human Rights Law*, Cambridge University Press, Cambridge
- de Bhailís Clíona and Flynn Eilionóir, 2017, 'Recognising Legal Capacity: Commentary and Analysis of Article 12 CRPD', *International Journal of Law in Context*, pp. 6-21
- Degener Theresia and Begg Andrew, 2017, 'From Invisible Citizens to Agents of Change: A Short History of the Struggle for the Recognition of the Rights of Persons with Disabilities at the United Nations' in V. Della Fina, R. Cera and G. Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary*, Springer, Cham
- Degener Theresia and Uldry Marine, 2018, 'Towards inclusive equality: 10 years Committee of the Rights of Persons with Disabilities', German Federal Ministry of Labour and Social Affairs, [http://www.anffas.net/dld/files/rapporto\\_10anni\\_attivit%C3%A0\\_comitato\\_onu\\_sui\\_diritti\\_delle\\_personone\\_con\\_disabilita\\_4sett\\_18.pdf](http://www.anffas.net/dld/files/rapporto_10anni_attivit%C3%A0_comitato_onu_sui_diritti_delle_personone_con_disabilita_4sett_18.pdf)
- Degener Theresia, 2017, 'A New Human Rights Model of Disability' in V. Della Fina, R. Cera and G. Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary*, Springer, Cham



- Delgado Casteleiro Andrés, 2012, 'EU Declarations of Competence to Multilateral Agreements: A Useful Reference Base?', *European Foreign Affairs Review*, pp. 491-509
- Drum Charles E., 2009, 'Models and Approaches to Disability' in C.E. Drum, G.L. Krahn and H. Bersani (eds), *Disability and Public Health*, American Public Health Association/American Association on Intellectual and Developmental Disabilities, <https://ajph.aphapublications.org/doi/book/10.2105/9780875531915>
- Ferri Delia and Broderick Andrea (eds), 2020, *Research Handbook on EU Disability Law*, Edward Elgar, Cheltenham
- Ferri Delia, Broderick Andrea and Leahy Ann, 2024 (forthcoming), 'The Global Governance of Disability Rights: Complexities, Participatory Trends and Intersections' in R. Houghton et al (eds), *Edward Elgar Research Handbook Global Governance*, Edward Elgar, Cheltenham
- Flynn Eilionóir, 2011, *From Rhetoric to Action: Implementing the UN Convention on the Rights of Persons with Disabilities*, Cambridge University Press, Cambridge
- Hirschl Ran, 2005, 'The Question of Case Selection in Comparative Constitutional Law', *American Journal of Comparative Law*, pp. 125-155
- Ipsen Hans Peter, 1966, 'Als Bundesstaat in der Gemeinschaft' in E. von Caemmerer, H.J. Schlochauer and E. Steindorff, *Probleme des Europäischen Rechts. Festschrift für Walter Hallstein zu seinem 65. Geburtstag*, Klostermann, Frankfurt
- Kakoullis Emily Julia and Johnson Kelley (eds), 2020, *Recognising Human Rights in Different Cultural Contexts: The United Nations Convention on the Right of Persons with Disabilities (CRPD)*, Palgrave Macmillan, Singapore
- Kanter Arlene S., 2017, *The Development of Disability Rights under International Law: From Charity to Human Rights*, Routledge, Abingdon
- Kayess Rosemary and French Philip, 2008, 'Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities', *Human Rights Law Review*, pp. 1-34
- Lawson Anna and Waddington Lisa, 2018, 'Interpreting the Convention on the Rights of Persons with Disabilities in Domestic Courts' in L. Waddington and A. Lawson (eds), *The UN Convention on the Rights of Persons with Disabilities in Practice: A Comparative Analysis of the Role of Courts*, Oxford University Press, Oxford
- Manca Luigino, 2017, 'Article 33: National Implementation and Monitoring' in V. Della Fina, R. Cera and G. Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary*, Springer, Cham
- Meekosha Helen and Jakubowicz Andrew, 1999, 'Disability, Political Activism, and Identity Making: A Critical Feminist Perspective on the Rise of Disability Movements in Australia, the USA and the UK', *Disability Studies Quarterly*, Vol. 19, pp. 393-404
- Mégret Frédéric, 2008, 'The Disabilities Convention: Human Rights of Persons with Disabilities or Disability Rights?', *Human Rights Quarterly*, Vol. 30, pp. 494-522
- Mjöll Arnardóttir Oddný, 2009, 'A Future of Multidimensional Disadvantage Equality' in O. Mjöll Arnardóttir and G. Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives*, Martinus Nijhoff Publishers, The Hague
- Morris Jenny, 1991, *Pride Against Prejudice: Transforming Attitudes to Disability: A Personal Politics of Disability*, Women's Press, London
- Oliver Michael, 1996, *Understanding Disability: from Theory to Practice*, Macmillan Education, New York
- Palermo Francesco and Kössler Karl, 2017, *Comparative Federalism. Constitutional Arrangements and Case Law*, Hart Publishing, Oxford



- 
- Pearl Alex L., 2013, 'Article 12 of the United Nations Convention on the Rights of Persons with Disabilities and the Legal Capacity of Disabled People: The Way Forward?', *Leeds Journal of Law and Criminology*, pp 1-30
  - Pelka Fred, 2012, *What We Have Done: An Oral History of the Disability Rights Movement*, University of Massachusetts Press, Amherst and Boston
  - Pillay Navi, 2014, 'The Convention on the Rights of Persons with Disabilities. Training Guide. Professional Training Series No. 19', United Nations Publication, New York
  - Prince Michael J., 2011, 'Canadian Federalism and Disability Policy Making', *Canadian Journal of Political Science/ Revue Canadienne De Science Politique*, Vol. 34, pp. 791-817
  - Quinn, Gerard, 2009, 'A Short Guide to the United Nations Convention on the Rights of Persons with Disabilities' in G. Quinn and L. Waddington (eds), *European Yearbook on Disability Law: Volume 1*, Intersentia, Antwerp
  - Quinn Gerard, 2009, 'Resisting the "Temptation of Elegance": Can the Convention on the Rights of Persons with Disabilities Socialise States to Right Behaviour?' in O. Mjöll Arnardóttir and G. Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives*, Martinus Nijhoff Publishers, The Hague
  - Schapiro Robert A., 2009, *Polyphonic Federalism. Toward the Protection of Fundamental Rights*, University of Chicago Press, Chicago
  - Scholten Matthé and Gather Jakov, 2018, 'Adverse Consequences of Article 12 of the UN Convention on the Rights of Persons with Disabilities for Persons with Mental Disabilities and an Alternative Way Forward', *Journal of Medical Ethics*, Vol. 44, pp. 226-233
  - Shakespeare Tom, 2006, *Disability Rights and Wrongs*, Routledge, Abingdon
  - Skarstad Kjersti and Stein Michael Ashley, 2018, 'Mainstreaming Disability in the United Nations Treaty Bodies', *Journal of Human Rights*, Vol. 17, pp. 1-24
  - Stein Michael Ashley, 2007, 'Disability Human Rights', *California Law Review*, Vol. 95, pp. 75-121
  - Weller Penelope, 2013, *New Law and Ethics in Mental Health Advance Directives: The Convention on the Rights of Persons with Disabilities and the Right to Choose*, Routledge, Abingdon
  - Woodin Sarah, 2019, 'Monitoring of the Rights of Blind and Partially-Sighted People in Europe: An Analysis of the European Blind Union CRPD Database - Article 33: National Implementation and Monitoring', European Blind Union, [https://www.euroblind.org/sites/default/files/documents/article\\_33\\_2019\\_report2.pdf](https://www.euroblind.org/sites/default/files/documents/article_33_2019_report2.pdf)
  - Zola Irving Kenneth, 1982, *Missing Pieces: A Chronicle of Living with a Disability*, Temple University Press, Philadelphia