

THE RIGHT TO INCLUSIVE EDUCATION IN INTERNATIONAL HUMAN RIGHTS LAW

Education is a fundamental human right that is recognised as essential for the attainment of all civil, political, economic, social and cultural rights. It was not until 2006, with the adoption of the UN Convention on the Rights of Persons with Disabilities (CRPD), that the right to inclusive education was codified. This volume fills a major gap in the literature on the right of disabled people to education. It examines the theoretical foundations and core content of the right to inclusive education in international human rights law, and explores the various ways of implementing this right through a study of legal strategies and mechanisms. With contributions by leaders in the field, this volume advances scholarship on the right to inclusive education by examining the content and practice of the right at the national, regional and international levels.

Gauthier de Beco is Reader in Human Rights at the University of Huddersfield, and previously taught at the University of Leeds, the KU Leuven and University College London. He has widely published in the field of international human rights law, including on the issue of inclusive education, and is on the editorial board of the *Revue trimestrielle des droits de l'homme*. He has worked as an expert to several governments, international organisations and NGOs.

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DR SHIVAUN QUINLIVAN is a law lecturer at the Centre for Disability Law and Policy and the School of Law at NUI Galway. She teaches constitutional law and disability law and policy subjects, including a module on inclusive education law and policy. Her research interests and publications focus primarily on the rights of people with disabilities, with a particular focus on education and employment. In that capacity, she has worked with and for a range of statutory and other agencies in Ireland and Europe, including the Equality Authority, the National Council for Special Education, the Association of Higher Education Access and Disability and the Health Service Executive, as well as a number of European Commission-funded projects. She is currently working on a disability legislative project with the States of Guernsey and on an inclusive education pilot in NUI Galway. Shivaun Quinlivan was the first director of the LLM in international and comparative disability law and policy, and in that capacity she was fundamental to the development of the programme. She is a member of the management committee of the Centre for Disability Law and Policy in NUI Galway. She has recently completed an O'Brien Residential fellowship in the Centre for Human Rights and Legal Pluralism in McGill University in Canada. Most recently, Shivaun Quinlivan was appointed to the role of Vice Dean for Equality, Diversity and Inclusion in NUI Galway. Dr Quinlivan holds a BA and an LLB from NUI Galway, an LLM from King's College London, a BL (barrister at law) from The Honourable Society of King's Inns and a PhD from Trinity College Dublin.

DEEPTI S. RAJA has worked for more than a decade on the socioeconomic inclusion of persons with disabilities and mainstreaming disability in development programming. Her work has spanned research, policy analysis and capacity-building programmes. She currently works as a senior consultant to the World Bank's global disability advisor. Deepthi S. Raja's work has extensively focussed on technology as an enabler of educational, economic and broader social participation. Previously, she worked as the director of international programmes and as a senior researcher at the Burton Blatt Institute at Syracuse University, a senior

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PROFESSOR MICHAEL SHEVLIN joined the School of Education in Trinity College Dublin in 1996, having worked as a post-primary teacher. He has developed a number of inclusive education programmes in initial teacher education and in continuing professional development for established teachers. He has participated in a number of governmental and non-governmental initiatives designed to enhance educational inclusion. Michael Shevlin chairs AHEAD, an organisation dedicated to improving access to further and higher education and employment for people with disabilities within Irish society. He is also the director of the Trinity Centre for People with Intellectual Disabilities, which has been established to provide a higher education programme for young people with intellectual disabilities and to enable these young people to access employment opportunities. He has been published widely and is currently engaged in research on transitions to post-secondary education for young people with disabilities.

PROFESSOR MICHAEL ASHLEY STEIN is the co-founder and executive director of the Harvard Law School Project on Disability; a visiting professor of law at Harvard Law School; extraordinary professor at the University of Pretoria Faculty of Law, Centre for Human Rights; and formerly professor (and Cabell Professor) at William & Mary Law School. An internationally acclaimed expert on disability law and policy, Michael Ashley Stein participated in the drafting of the United Nations Convention on the Rights of Persons with Disabilities, works with disabled persons' organisations around the world, actively consults with governments on their disability laws and policies, advises a number of United Nations bodies, has brought landmark litigation and has written extensively on disability rights. He holds a JD from Harvard Law School and a PhD from Cambridge University.

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organisations and is a former member of the steering group of the Irish Council of People with Disabilities. The second edition of his book, *Social Inclusion and the Legal System: Public Interest Law in Ireland*, was published in 2015.

NI ZHEN works in the disability rights field. He is a consultant to various DPOs and NGOs in China. He has an LLM in human rights law from the University of Hong Kong and an MA in education from Durham University. Ni Zhen spent most of his student life in special schools. His research interests include inclusive education, disability rights and civil society participation.

Acknowledgements

The genesis of this book came from a conversation between Gauthier de Beco and Shivaun Quinlivan during a conference organised at the National University of Ireland, Galway, on 22 February 2014, entitled ‘Article 24 UNCRPD: Is This a *Brown v. Board of Education* Moment?’ From that humble beginning, we agreed on the necessity of a volume that would place the right to inclusive education within the broad context of international human rights law and we began to plot what that volume would look like. We were delighted when Janet Lord agreed to come on board as a co-editor, and this volume is the result of our combined thinking on the subject. We would in the first instance like to thank each other, as it has been a pleasure to work on this project from start to finish. This is important when you are trying to coordinate thirty authors in twenty-two different jurisdictions. We would also like to thank each and every contributor for their understanding as we brought the manuscript together.

We share in the recognition that it would have been considerably more difficult – perhaps impossible – to bring the volume together were it not for the incredible work of our sub-editor, Alice Kuzmenko. Alice was a fabulous addition to our team. Her work was efficient, accurate and detail orientated, and we share the view that this volume benefitted significantly from her sharp observations and comments. These words do not do justice to her work, but we hope she knows how much we appreciate that work.

Gauthier de Beco, Shivaun Quinlivan and Janet E. Lord

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This project has had an important role in shaping my current research on human rights and disability. It has given me the chance not only to reflect about what the right to inclusive education actually means but also, most important, to explore many of the issues I will be dealing with over the coming years. It also helped to forge important global connections with all the people involved. This volume therefore represents more of a beginning than an end to this large-scale endeavour. I would like to thank the two employers I have been working for while coordinating it, namely the KU Leuven, Belgium, and the University of Leeds, UK. Both of them provided me with the ideal professional environment in which to carry out my work. I am grateful for both the time and the advice I received from several colleagues in order to work on the volume. I am also enormously grateful to my two co-editors, who showed their unwavering commitment and enthusiasm. Finally, I wish to thank my family, namely my wife, Aurélie, and my two children, Pierre and Victoria, who inspire me and give meaning to my work.

Gauthier de Beco, Leeds

I would like to extend my thanks to my employer, NUI Galway, for facilitating me in arranging the original conference and then later for affording me the opportunity for sabbatical which allowed me to complete my contributions to this volume. I am grateful also to the O'Brien Fellows in Residence programme that allowed me to spend four months of my sabbatical at McGill University in the McGill Centre for Human Rights and Legal Pluralism in Montreal. This time in Canada gave me the time, space and opportunity to discuss and develop my work for this volume. I am incredibly grateful to both institutions for their support. I am grateful to my co-editors for the commitment and the sense of fun they brought to this project, it has been a pleasure working with them. Finally, I would as always like to thank my parents, Jim and Mary, and my daughter, Síoira, who are always there for me.

Shivaun Quinlivan, Galway

My co-editors have greatly advanced my thinking on the subject of inclusive education and its current configuration in the international human rights system. They are a delight to work with, and our location in three countries and different time zones was a challenge we were able to overcome with ease given our strong sense of collaboration and congeniality. I am grateful to have them both as colleagues and as friends. My colleague at the Harvard Law School Project on Disability, Michael Stein, is a constant bulwark and support in all things related to academic writing and research; our chance meeting one evening during the drafting of the Convention on the Rights of Persons with Disabilities set off

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a collaboration and friendship that is not possible to adequately account for in a few words. I am grateful to my family for their encouragement and support. My children, Lynne and Daniel, responded to my mutterings about needing to ‘finish a book chapter’ with a collective groan and a directive to ‘get it done, Mom!’ And finally, above all, there would be no writing of any kind in this or any other work had Julie not, years ago, admonished me to stop spinning my wheels and pressed me to ‘just put yourself out there’.

Janet E. Lord, Baltimore, Maryland
July 2018

Preface by Theresia Degener

The Convention on the Rights of Persons with Disabilities (CRPD) has been called an empowerment treaty, and this characterises first and foremost the right to inclusive education as enshrined in Article 24. Inclusive education as a fundamental human right empowers disabled people to flourish, to enjoy equal opportunity, to lead self-determined lives and to participate in the political, economic, social and cultural systems of society. The development of the right to education as a human right has best been described in the early 1990s by the first United Nations Special Rapporteur on the Right to Education, Katharina Tomasèvsky, who distinguished four phases of realising the human right to education for marginalised groups: exclusion, segregation, integration and inclusion. The history of disabled people reflects these development stages. First, disabled people were excluded from education; then they were segregated in special schools; thirdly, those deemed fit for the mainstream were integrated, and now is the time of inclusion. Of course, nothing of this belongs to the past. During its first decade, the Committee on the Rights of Persons with Disabilities has adopted more than seventy Concluding Observations on States Parties' reports. During the preceding dialogues with governments from all over the world, we have seen horrifying statistical and anecdotal evidence about the exclusion of a large number of disabled children from education. We have heard testimonies about educational discrimination through segregation and integration. Disabled children were prevented from developing their personality and talents because they were relegated to special schools and offered few opportunities to learn while overloaded by therapeutic interventions. We have heard about disabled children being left behind in integrated settings without accommodation relating to Braille, sign language interpretation, Easy Read or other modes and formats of communication. But with the CRPD disabled people have been vested with a normative framework

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Preface by Theresia Degener

that provides the right to education as a right to inclusive education. Without this normative framework the fourth stage of realising the human right to education cannot be reached. The Committee has provided some jurisprudence in this regard. In our Concluding Observations and General Comments, we have developed the human rights model of disability as the conceptual basis and given guidance on how to apply the human rights-based approach to inclusive education. We have developed the concept of inclusive equality and explained its relation to the human rights model of disability. Some scholars say we have developed the most modern international human rights law; others see it as a normative overdose. However, most of this rich normative framework has reached neither legal practice nor legal theory. This book is thus timely and greatly needed. I salute the editors and the authors for providing such a comprehensive overview of the development of the right to inclusive education, its normative content and conceptual basis and its theoretical and practical aspects. The volume closes a gap on reflection about the understanding of the right to inclusive education, especially from a legal perspective.

Geneva, August 2018

Theresia Degener

The Arthur Cox Foundation

Arthur Cox, solicitor, classical scholar and former president of the Incorporated Law Society of Ireland, was associated with the setting up of many Irish companies, not least the ESB. He was a specialist in company law and was a member of the Company Law Reform Committee which sat from 1951 and reported to the government in 1958, ultimately giving rise to the Companies Act 1963. When he decided to retire from practice as a solicitor in 1961, a number of his clients, professional colleagues and other friends, in recognition of his outstanding contribution to Ireland and his profession, thought that a fund should be established as a tribute to him which would be used to encourage the writing and publication of legal textbooks. There was a generous response to this appeal.

After his retirement, Arthur Cox studied for the priesthood and was ordained in 1963. He went to Zambia to do missionary work. He died there in 1965 as a result of a car accident.

The Foundation was established to honour Arthur Cox and was for many years administered by Mr Justice John Kenny in conjunction with the Law Society. John Kenny was the encouraging force behind the publication of a number of Irish legal textbooks. Without his quiet drive and enthusiasm there would have been no Foundation. To both Arthur Cox and John Kenny we pay tribute.

The Foundation's funds have been used to assist in the writing and publication of Irish legal textbooks and the development of electronic databases of Irish legal materials. The Foundation has recently inaugurated an annual prize for the best overall results in the business and corporate law modules of the Law Society's Professional Practice Courses.

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The Arthur Cox Foundation

The Law Society, as the continuing trustee of the Foundation, is pleased to have been able to assist in the publication of this book.

Patrick Dorgan

President

Law Society of Ireland

Feb. 2019