

International and European Disability Law and Policy

In this first textbook on international and European disability law and policy, Broderick and Ferri analyse the interaction between different legal systems and sources. Guided by the global legal standards of the CRPD, students are equipped with the necessary theoretical and conceptual background on disability, and are given a comprehensive overview of the international and European legal and policy frameworks on disability.

The narrative maintains the important balance between theory and practice, focusing on both the legal framework and challenges in the realm of policy-making, as well as ensuring that students are aware of current legal debates and controversial issues in the field. Accommodating different learning styles, the book employs a range of accessible features, which include learning outcomes at the start of each chapter, problem questions, thought bubbles, group activities, extracts from legal debates and a variety of textboxes.

Including case studies and examples from countries around the world, this book has a truly global perspective that is suitable for introductory and advanced modules in law departments, as well as interdisciplinary courses.

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International and European Disability Law and Policy

Text, Cases and Materials

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*Scribendum ergo quam diligentissime et quam plurimum.
Nam ut terra alte refossa generandis alendisque seminibus fecundior,
sic profectus non a summo petitus studiorum fructus
et fundit uberius et fidelius continet.*

(Quintilianus, *Institutio Oratoria* X, 3, 2)

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FOREWORD

As the introduction to this book remarks: ‘In the last decade, disability law has emerged as a distinct and dynamic field of international and European action, and as an evolving academic discipline’. Consequently, it is not surprising that disability law, whether in the form of international, European or comparative law, is increasingly being taught in stand-alone courses at universities as well as within broader human rights courses, and that there is increasing demand for training and knowledge in this area among practitioners, policy-makers and civil society. Such a discipline demands a textbook, which acknowledges its status as a comprehensive body of law that has matured into a coherent discipline. This book by Andrea Broderick and Delia Ferri is the first such textbook to be published. It reflects the truly global nature of disability human rights following the adoption of the UN Convention on the Rights of Persons with Disabilities. The textbook covers both international and European disability human rights law, as well as including chapters on disability rights within the Inter-American and African human rights systems.

This book is an impressive achievement – as noted above, not only is it the first such publication, but its scope is very broad and the authors have taken different pedagogical approaches and learning styles into account, thereby enabling the book to be used to support different teaching activities and styles. Such detailed attention to how a book will actually be used by students and tutors is sometimes missing from textbooks, and this thoughtfulness is to be applauded. However, given its comprehensive and detailed scope, the book will be of value not only to students and tutors, but to legal practitioners, civil society organisations and policy-makers and civil servants who work for States Parties to the UN Convention on the Rights of Persons with Disabilities.

The field of disability human rights law has ‘come of age’. It requires not merely a chapter or two in textbooks covering international law as was previously the case, but a textbook of its own. Andrea Broderick and Delia Ferri have met this challenge and written an excellent textbook, for which there is now a clear need.

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PREFACE

This textbook addresses international and European disability law and policy, highlighting, in a comparative fashion, the interaction between different sources of law and legal systems. It aims to describe the principles embraced by the human rights model of disability and by the social model, as opposed to the outdated medical model, in order to equip students with the necessary theoretical and conceptual background on disability. Furthermore, it aims to provide a comprehensive overview of the international legal and policy framework on disability, including regional systems for the protection of disability rights. By including chapters on the European Union (EU) and the Council of Europe (CoE), the Inter-American and the African systems as well as on the protection of the rights of people with disabilities in Asia, this textbook aims to achieve a global focus. This is strengthened by the addition, where appropriate, of case studies and examples of good practice from different countries around the world.

The textbook is divided into three main parts, preceded by an introductory chapter that lays down the methodology and pedagogical approach of the book. The first part examines the development of international standards on disability, focusing on the United Nations Convention on the Rights of Persons with Disabilities (CRPD or the 'Convention'). The general comments and decisions of the United Nations Committee on the Rights of Persons with Disabilities (CRPD Committee) are also addressed, among other sources. The second part analyses EU disability law and policy, paying attention to the role of the Court of Justice of the EU (CJEU) in protecting the rights of EU citizens with disabilities. Since the CRPD is the first human rights treaty that the European Union has concluded, this textbook critically assesses the status and effects of the CRPD in the EU legal order. The third part of the textbook covers the role of regional systems, such as the CoE and the Inter-American and African human rights systems, as well as other transnational regimes, in protecting and promoting the rights of people with disabilities.

The textbook is premised on the idea that it should address a diverse readership. It aims to be usable by students at different levels, while maintaining academic rigour. Written in an accessible style, the textbook blends legal and policy analysis, and it makes extensive references to relevant primary and secondary sources. All topics included in the book are broken down into

easy-to-read sections, with clear headings. In addition, the textbook aims to maintain a balance between theory and practice. This combination makes the textbook suitable for purely legal programmes as well as interdisciplinary courses in disability studies.

The textbook includes special pedagogical features, summaries and activities. Textboxes and extracts from various sources are also included. In addition, the textbook contains several flow charts and diagrams, which are specifically designed to facilitate the understanding of key issues, and ‘thinking points’ for reflection, in order to test one’s knowledge and foster critical thinking. Further reading lists on selected topics are supplied at the end of each chapter, to deepen the reader’s knowledge. On the whole, the textbook aims at inspiring students to reflect on the *status quo* of the law and to challenge existing paradigms, motivating them to explore the subject matter in a deeper manner.

It is important to point out that this textbook builds directly on the authors’ teaching experience in both undergraduate and postgraduate classes, as well as their experience with students from different cultural and linguistic backgrounds. In order to accommodate diverse learning styles, the textbook strikes a careful balance between the need to address technical topics in a comprehensive fashion and the need to ensure readability. It is intended to be a flexible instrument that is targeted at introducing the foundations of disability law and policy and, at the same time, presenting specialist knowledge and highlighting current developments in the field.

This textbook is the product of a close collaboration between the authors and of a joint process of reflection and elaboration. However, Andrea Broderick wrote Chapters 2, 4, 6, 8, 11 and 14, while Delia Ferri wrote Chapters 3, 5, 7, 10, 12 and 15. This preface, the introductory chapter as well as Chapters 1, 9 and 13 have been written jointly by the authors.

Finally, it is important to bear in mind that this textbook takes into account legal developments and judicial decisions up to 1 December 2018.

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We first spoke about writing a textbook on disability law and policy three years ago, in order to facilitate the studies of our own students and to allow them to engage in a more comprehensive and cross-cutting manner with the rights of persons with disabilities. The process of writing this textbook has been a long and demanding one, but we are extremely proud of the fact that we have compiled the first academic textbook on international and European disability law. This textbook is being published at an opportune moment in time, ten years after the entry into force of the United Nations Convention on the Rights of Persons with Disabilities. We feel that this is the ideal moment to take stock of the extent to which the Convention has influenced regional and domestic legal and policy systems, as well as the system of international human rights protection on the whole.

Compiling this volume was indeed a challenging endeavour, but we would not have been able to do so without the support of the many people with whom we have worked closely along the way. We are indebted, first of all, to the wonderful academics who have inspired us, although in very different ways and capacities, to pursue research in the field of disability law: Professor Lisa Waddington, Professor Anna Lawson and Professor Gerard Quinn. Your work in the field is much admired. Special thanks also go to the three anonymous reviewers who helped to streamline the research objectives at the beginning of the writing process, and to the four anonymous reviewers who gave their helpful feedback on selected chapters at a later stage.

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ABBREVIATIONS

AAC	Alternative and Augmented Communication
ACDEG	African Charter on Democracy, Elections and Governance
ACE	Arts Council of England
ACHPR	African Commission on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ACRWC	African Charter on the Rights and Welfare of the Child
Action Plan	Council of Europe Disability Action Plan 2006–2015
ADA	Americans with Disabilities Act
African Charter	African Charter on Human and Peoples' Rights
African Court	African Court on Human and Peoples' Rights
African Decade	African Decade of Persons with Disabilities 1999–2009
African Decade 2010–2019	African Decade of Persons with Disabilities 2010–2019
African Women's Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
AHRD	ASEAN Human Rights Declaration
AICHR	ASEAN Intergovernmental Commission on Human Rights
ANED	Academic Network of European Disability Experts
AODA	Accessibility for Ontarians with Disabilities Act
ARI	African Rehabilitation Institute
ASEAN	Association of Southeast Asian Nations
AT	Assistive Technologies
AU	African Union
AYC	African Youth Charter
Auslan	Australian Sign Language
AVMS	Audiovisual Media Services Directive
Bali Declaration	Bali Declaration on the Enhancement of the Role and Participation of the Persons with Disabilities in ASEAN Community
B2C	Business-to-Consumers

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CAHDPH	<i>Comité Ad Hoc sur les droits des personnes handicapées</i> (Ad-Hoc Committee of Experts on the Rights of Persons with Disabilities)
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	Committee on the Elimination of Discrimination against Women
CEDDIS	<i>Comité Interamericano para la Eliminación de Todas las Formas de Discriminación contra las Personas con Discapacidad</i> (Inter-American Committee for the Elimination of All Forms of Discrimination against Persons with Disabilities)
CEN	European Committee for Standardization
CENELEC	European Committee for Electrotechnical Standardization
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CESCR	UN Committee on Economic, Social and Cultural Rights
CHRC	Canadian Human Rights Commission
CIADDIS	<i>Convención Interamericana para la Eliminación de Todas las Formas de Discriminación contra las Personas con Discapacidad</i> (Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities)
CJEU	Court of Justice of the European Union
CoE	Council of Europe
CoE CoHR	Council of Europe Commissioner for Human Rights
CoM	Committee of Ministers of the Council of Europe
Continental Plan	Continental Plan of Action of the African Decade of Persons with Disabilities 2010–2019
COs	Concluding Observations
CRC	UN Convention on the Rights of the Child
CRC Committee	Committee on the Rights of the Child
CRPD	UN Convention on the Rights of Persons with Disabilities
CRPD Committee	UN Committee on the Rights of Persons with Disabilities
CRTH	Centre de Ressources Théâtre et Handicap
CteAT	UN Committee against Torture
DGCS	Directorate-General for Development Cooperation
DPOs	Disabled Peoples' Organisations

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EAA	European Accessibility Act
EAFRD	European Agricultural Fund for Rural Development
EASPD	European Association of Service Providers
EC	European Community
ECHR	European Convention on Human Rights
ECSR	European Committee of Social Rights
ECtHR	European Court of Human Rights
EDF	European Disability Forum
EDS	European Disability Strategy 2010–2020
EEC	European Economic Community
EEOC	Equal Employment Opportunity Commission
EFA	Education for All
EIDD	European Institute for Design and Disability
EMFF	European Maritime and Fisheries Fund
ENIL	European Network on Independent Living
EPSR	European Pillar of Social Rights
ERDF	European Regional Development Fund
ESC	European Social Charter
ESCAP	UN Economic and Social Commission for Asia and the Pacific
ESCWA	UN Economic and Social Commission for Western Asia
ESF	European Social Fund
ESOs	European Standardisation Organisations
ETSI	European Telecommunications Standards Institute
ETUC	European Trade Union Confederation
EU	European Union
EU CFR	Charter of Fundamental Rights of the European Union
EU DAP	European Union Disability Action Plan
EURES	Regulation on a European Network of Employment Services
FRA	European Union Agency for Fundamental Rights
GBER	General Block Exemption Regulation
GDP	Gross Domestic Products
HRC	Human Rights Committee
HRW	Human Rights Watch
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
IAHRS	Inter-American System for the Protection of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights

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ICF	International Classification of Functioning, Disability and Health
ICIDH	International Classification of Impairments, Disabilities and Handicaps
ICT	Information and Communications Technologies
IDC	International Disability Caucus
IEC	International Electronic Commission
ILO	International Labour Organization
Incheon Strategy	Incheon Strategy to 'Make the Right Real' for Persons with Disabilities in Asia and the Pacific
INGOs	International Non-Governmental Organisations
ISO	International Organization for Standardization
IVF	In vitro fertilisation
Kampala Convention	AU Convention on Internally Displaced Persons in Africa
LAS	League of Arab States
LFS-AHM	EU Labour force survey
MCSS	Multi-Country Survey Study on Health and Responsiveness
MDAC	Mental Disability Advocacy Center
MDGs	Millennium Development Goals
MDRI	Mental Disability Rights International
Mobilisation Framework	Mobilisation Framework of the ASEAN Decade
MoU	Memorandum of Understanding
NCVS	National Crime Victimization Survey
NHRIs	National Human Rights Institutions
NGOs	Non-Governmental Organisations
OAS	Organization of American States
OAS Charter	Charter of the Organization of American States
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
OIE	International Organisation of Employers
OJ	Official Journal of the European Union
OP-CRPD	Optional Protocol to the Convention
PA	Parliamentary Assembly of the Council of Europe
PAD	Program of Action for the Decade of the Americas for the Rights and Dignity of Persons with Disabilities
PO	Personal Ombudsmen
PWDA	People with Disability Australia

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Revised Charter	Revised European Social Charter
RPDA Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa
SAM	State Aid Modernisation
SCTS	Scottish Courts and Tribunals Service
SDGs	Sustainable Development Goals
SSOs	Standard-Setting Organisations
Standard Rules	Standard Rules on the Equalization of Opportunities for Persons with Disabilities
TEN-T	Trans-European Transport Network
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TSI	Technical Specifications for Interoperability
UD	Universal Design
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCHR	UN Commission on Human Rights
UNDG	UN Development Group
UNDP	UN Development Programme
UNESCO	UN Educational, Scientific and Cultural Organization
UNGA	UN General Assembly
UNPRPD	UN Partnership on the Rights of Persons with Disabilities
UPIAS	Union of Physically Impaired People Against Segregation
USID	User-Sensitive Inclusive Design
WDE	World Declaration on Education
WG	Working Group
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WPA	World Programme of Action Concerning Disabled Persons
1996 Strategy	1996 European Community Disability Strategy

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