Extracting Protection for the Rights of Persons with Disabilities from Human Rights Frameworks: Established Limits and New Possibilities

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1 Introduction: What Makes the UN Convention on the Rights of Persons With Disabilities Special?

The UN Convention on the Rights of Persons with Disabilities (hereafter ‘the UN Convention’)
1 is a major development in international human right law for two different reasons. Firstly, the Convention marks the point at which the dynamic growth of human rights law since 1945 begins to take disability rights seriously. Rowena Daw has commented that ‘[D]isability was, until very recently, the forgotten dimension of human rights and unacknowledged as a subject for a right to equality.’2 The UN Convention transforms this situation by giving disability rights a firm and fixed place within the constellation of international human rights.3 Secondly, the Convention is also notable for how it articulates

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1 For the text of the UN Convention and an invaluable archive of the negotiations that lead up to the final text, see http://www.un.org/disabilities/.


and gives effect to a distinctive vision of the rights of the individual within society. This differs in important respects from how the relationship between individual rights and an individual’s place within society is often understood when other human rights instruments are being interpreted and applied. As such, the Convention’s importance extends beyond its impact in the specific area of disability rights: it represents a significant new development in international human rights law in general.

What is this distinctive vision which the Convention embodies? Its text imposes various positive obligations upon ratifying states to ensure that persons with disabilities are provided with the minimum level of state support and assistance that will enable them to maintain a dignified existence. For example, Article 9 requires states to take ‘appropriate measures’ to ensure persons with disabilities can access, on an equal basis with others, the physical environment, transport, communications and other forms of facilities and services open to or provided to the public. The Convention therefore adopts a particular conceptual view of the state’s role in securing individual human rights as involving more than simple abstinence from the abuse of individual civil and political rights. Instead, the state is expected to play an active role in creating the social conditions necessary for individuals to be treated with dignity. The vision of rights embodied in the Convention is thus based upon the recognition that individuals with disabilities are not self-sufficient monist entities, but rather depend upon collective social action to make provision for their basic rights.

The Convention therefore articulates a very different vision of rights from that embedded in the US Constitution, for example, where individual rights are primarily conceived as imposing negative constraints upon the state in order to maximise individual autonomy. However, important differences also exist between the view taken of the purpose of individual rights in the Convention, and how the role of individual rights is conceptualised within the major international and regional civil and political rights instruments, such as the European Convention on Human Rights (ECHR) and equivalent national rights instruments, such as the Canadian Charter of Fundamental Rights and Freedoms.

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See also e.g. the ‘general obligations’ upon states parties set out in Article 4, and the rehabilita-
tion provisions in Article 26 of the Convention.