

Re-Imagining Personhood and Public Policy

Voice & Choice:

The Moral Compass of the UN Convention on the Rights of Persons with Disabilities

Killarney, 22 April 2013.



©EnchantedLearning.com

Gerard Quinn

Centre for Disability Law and Policy, NUI Galway

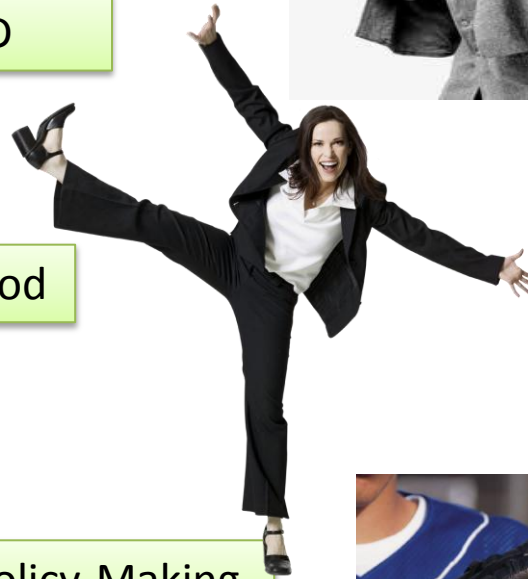
www.nuigalway.ie/cdlp



1. Background to the UN CRPD



2. The Philosophy of Personhood



3. From Theory, to Rights, to Policy-Making



1. Background to the UN CRPD

Traditional Policy Response To the Difference of Disability

Deficits-based

Problem is the person

Difference used negatively

Main policy response was welfare to cushion absence from mainstream – a **Gilded Cage**

Segregation appears 'natural'

Cycle of exclusion/poverty continues

UN CRPD Sharp Break from the Past

Disability is an evolving concept and flows from interaction with social factors

Disability is diverse

People with disabilities have enormous contributions to make

Proper policy frame is Justice/Rights - **not** deficits

Main task is to reverse legacy of deficits thinking/policy

...../and....to build an open, inclusive Society that respects/accommodates Difference

Bring disability 'home' to web of human rights treaties

Innovations on traditional human rights treaties...

No man is an island/
Explicitly allowance is made for both
Subjectivity and Inter-subjectivity
Independence and Inter-dependence

An acknowledgement that social, cultural, economic isolation diminishes the possibility for human flourishing – so big challenge is stitching it back together

A frank acknowledgement of Accumulated Disadvantage

A creative blending of **negative duties** (civil rights) with **positive duties** (economic, social & cultural Rights)

An attempt at 'Intersectionality' – overlapping identities of disability, gender, youth.

2. Personhood in the CRPD: 'Voice' and 'Choice'

Personhood – I count

12. Assumption of Legal Capacity to Make Own Decisions & have them Respected



Independence
Its My Life

19. Right to Living Independently and be included in the Community



Involvement
In Processes that Affect me

4.3 33.3 Active consultation and involvement
In all decision-making processes
'Nothing about us without us'



Foundations

Personhood

Art 12 – Right to Equal Recognition before the Law Full Legal Capacity

**Break the link between ‘mental capacity’ and ‘legal capacity’
‘Will & preference’ to replace ‘Best Interests’**

Connect people with social and **naturally-occurring** community supports

Provide additional support options for individuals who have no community supports

Augment capacity in those who have lacked social connectedness (e.g., institutionalized)

Put in place a Positive **Institutional Framework** to develop support networks

See: Essential Principles: Irish Legal Capacity Law

http://www.amnesty.ie/sites/default/files/file/MentalHealth/PRINCIPLES_WEB.pdf

Emanations...../

Art 19. The Right to Live Independently and be Included in the Community

Spatial Image of Art 19 - This is not Primarily about Bricks & Mortar.

“It’s not only other people who hold us in our identities.

Familiar places and things, beloved object, pets, cherished rituals, one’s own bed or favourite shirt, can and do help us maintain our sense of self.

And it is no accident that much of this kind of holding goes on in the place where our families are: at home.

The home...is an extension and mirror of the living body in its everyday activity and is thus a *materialization* of identity...

our homes manifest who we are at the same time as they provide the physical scaffolding that *supports* who we are.”

Quoted from Hilde Lindeman, ‘*Holding One Another*’ in Eva Feder Kittay & Licia Carlson (Eds.), *Cognitive Disability and the Challenge to Moral Philosophy*, (Wiley Blackwell 2010) at 163-164.

Article 19 Living independently and being included in the community

States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community,

with choices equal to others,

and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right

and their full inclusion and participation in the community

Not beholden to one model of Independent Living

Indep Living tied directly to Being included in community

No contradiction between Independence and Community

Primary goal is both Independence AND social connectedness

Not Just Bricks & Mortar

3. Impact of CRPD on Policy Making

Obligations in **General Provision** (Art 4) and in **each of the Rights** (12. 19, etc)

Article 4 – General Obligations

- **Retro Glance** - Repeal inconsistent laws & policies. 4.1.b.
- **Forward Perspective** - Adopt appropriate new laws & other measures where needed. 4.1.a.
- **Mainstreaming**: Proof policies & programmes. 4.1.c.
- **Real Gradualism**: ‘progressively achieve’ economic and social rights. 4.2.
- **Nothing About us without us** - Closely consult and actively involve persons with disabilities in design of policies. 4.3.

Obvious
Implicit Assumption

Plan Ahead

Adopt National
Strategy

Monitor performance

Change direction
If needed

What About Gradualism – how Gradual is Gradual?



Core Concept with respect to Economic, Social & Cultural Rights is obligation to 'progressively achieve them' 'to the maximum of available resources' Art 4.2.

Limiting Principles

You Must Plan Ahead

The Common Minimum Core in Each right to be respected

You Must respect Non-Discrimination principle

You Must Achieve results -

Within reasonable timeframe

With Clear milestones

With Measurable progress

[which assumes tools to measure and a process to do so]

Core Spatial Image of UN CRPD – The Person Flourishing by Connecting with Others

Symbiotic Relationship between Independence and Inter-dependence [for all people]



SUPPORTED DECISION-MAKING IN THEORY & PRACTICE: IRELAND'S CAPACITY BILL

Monday 29 April 2013

What: A conference exploring how to practically implement capacity legislation that is compliant with the UN Convention on the Rights of Persons with Disabilities, through the introduction of supported decision-making and an approach that respects the individual's will and preferences. The speakers will discuss their experience of supported decision-making in practice and how this might be replicated in Ireland. We will hear from national and international experts who will discuss what Ireland's capacity bill must contain to ensure it is in line with the CRPD, and host a discussion on children and decision-making.

Morning session:

Will and preferences in the UN Convention on the Rights of Persons with Disabilities

9:45 **Gábor Gambos** (former member of UN Committee on the Rights of Persons with Disabilities)

10:15 **Gerard Quinn** (Director, Centre for Disability Law and Policy, NUI Galway)

10:40 Facilitated group discussion

11:00 Tea & coffee

Mid-morning session:

Theory to practice: supported decision-making in everyday situations

11:20 **Cher Nicholson** (Co-coordinator, South Australian Supported Decision Making Project)

12:05 **Maths Jespersen** (Swedish Personal Ombudsman system)

12:35 Facilitated group discussion

13:00 Lunch

Afternoon session:

Supporting will and preferences, including in children

14:00 Domestic speaker TBC



NUI Galway

CENTRE for DISABILITY
LAW & POLICY

IN ASSOCIATION WITH



eu2013.ie

Community Living for All

A Conference on the Future Role of the European Union Structural Funds to Advance Community Living for Older People and People with Disabilities.

PROGRAMME.

as of 12th of April, 2013.

In association with the Irish Presidency of the Council of the EU.

[Conference Website](#)

The conference is generously supported in part by the European Foundation Centre (EFC) Consortium of philanthropies on Human Rights and Disability (Brussels) and Fundación ONCE, Spain.



Fundación ONCE
para la cooperación e integración social
de las personas con discapacidad

Friday, 3 May 2013.

***Áras Moyola, National University of Ireland, Galway, Republic of Ireland.
9.00am – 5.30pm.***