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# **The UN Convention on the Rights of Persons with Disabilities and U.S. Law: An Overview of Differences**

Elisabeth Doyle

# *Similarities*

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- Principles overall consistent with US law.
- US law as inspiration.
- “Reasonable accommodation” (ADA requires that reasonable accommodations be provided to PWD to facilitate participation and inclusion of those with disabilities.)
- Recognition of the historic marginalization of PWD.
- Goals of equal opportunity, participation, independence and inclusion.

# *US Law*

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- US law: “anti-discrimination” approach (Title I ADA prohibits discrimination against PWD in the context of employment; Title II prohibits discrimination in programs, services, activities run by state and local government (schools, prisons) Title III prohibits discrimination in places of public accommodation (hotels, restaurants, retail establishments, etc). Section 504 of the Rehabilitation Act prohibits discrimination by organizations that receive federal funds.

# *Features of Convention*

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- Incorporates anti-discrimination approach.
- Affirmative approach to inclusion, integration, access in all spheres of life. Imposes affirmative obligations on State Parties to create conditions of dignity, inclusion, respect, and equality across the spectrum of human experience.
- Emphasis on maximizing human potential (women with disabilities, education).
- Uproot negative attitudes and stereotypes (awareness raising).
- Identifies barriers as what define disability, as opposed to an intrinsic difference or deficiency.
  - “[Disability] results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society.”

# *Selection of Quantifiable Differences Equality and Nondiscrimination (Article 5)*

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- Reasonable accommodation standard shared (All titles of ADA require that reasonable accommodations be provided to PWD to facilitate participation and inclusion of those with disabilities.)
- CRPD goes further in requiring that State Parties take all appropriate steps to ensure that reasonable accommodation is provided, or take specific measures that accelerate or achieve de facto equality. Under the Convention, these measures are not considered discrimination. These measures include quotas, incentives, affirmative action.
- Beyond what US law requires. Resistance to affirmative action or quotas.

# *Women with Disabilities* (Article 6)

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- State Parties recognize that women and girls with disabilities are subject to multiple forms of discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all their human rights and fundamental freedoms.
- State Parties must take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the Convention.
- US Law generally prohibits discrimination in employment on the basis of gender, and prohibits or makes actionable sexual harassment if sufficiently severe. (Title VII of Civil Rights Act of 1964). Prohibits discrimination or exclusion in educational programs or activities receiving federal financial assistance (Title IX of the Civil Rights Act of 1972).
- No federal laws specifically aimed at dual discrimination against women with disabilities.
- Differences: discrimination approach – identification of specific areas in which protection is needed, as opposed to holistic recognition of and affirmative approach to gender equality.

# *Education* (Article 24)

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- State Parties shall ensure an inclusive education at all levels and life-long learning directed to the full development of human potential, as well as the development of personality, talents, and creativity. Education must be inclusive and reasonable accommodation is required.
- US Law – IDEA – children with disabilities entitled to free and appropriate education - not necessarily to achieve their full human potential.

# *Awareness raising* (Article 8)

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- State Parties undertake to adopt immediate, effective and appropriate measures...to raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities...to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life...to promote awareness of the capabilities and contributions of persons with disabilities...
- Measures to this end include initiating and maintaining effective public awareness programs designed to nurture receptiveness to the rights of PWD, the promotion of positive perceptions of people with disabilities, and fostering at all levels of the education system an attitude of respect for the rights of PWD.
- Differences: No affirmative obligation under US law to actively promote positive, respectful, and realistic images of PWD and to counter unrealistic or negative images or myths.



# *Freedom from Exploitation, Violence, and Abuse* (Article 16)

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- State Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.
- US Law: No federal law specifically addressing violence against PWD.
- General state law protections.

# *IT Accessibility* (Article 9, Article 21)

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- State Parties are required to promote the research and development of universally designed goods and accessible technologies, and to take appropriate measures to ensure persons with disabilities equal access to information and communications and the internet. (Article 21 references private entities.)
- US Law: Federal government's IT must be accessible to PWD, including IT developed, maintained, or procured by the government. Access must be comparable to that available to non-disabled.
- Differences: Private websites – in US, this still an embattled issue. Not identified in ADA as a place of public accommodation that must be accessible to PWD. (Mixed court rulings, “nexus” theory, Target case.)

# *Employment* (Article 22)

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- State parties recognize the rights of persons with disabilities to work, on an equal basis with others, in an environment that is open, inclusive and accessible.
- Must ensure effective access to technical and vocational training, promote employment through affirmative action incentives, promote employment opportunities and career advancement, provide job placement assistance.
- Some similarities with US law: reasonable accommodations; discrimination prohibited in hiring, recruitment and retention.

## US Law:

- Title I of ADA marginally successful in increasing numbers of PWD in work force. Under US law, no quotas, incentive programs or affirmative action to cultivate balance; no emphasis on vocational training, difference in comprehensiveness of approach. (Fear of losing health insurance, Medicare also a factor in driving down employment levels.)

# *Living Independently (Article 19) and being included in Community Personal Mobility (Article 20)*

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- State parties must take effective and appropriate measures to ensure that persons with disabilities live independently and in the community.
  
- US Law:
  - Persons with disabilities cannot be discriminated against in the context of state services so long as no fundamental alteration in nature of services.
  - Possible conditions on receipt of public funds/public assistance programs.

# *Participation in Cultural Life, Recreation, Leisure and Sport (Article 30)*

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- US law does not recognize participation in cultural life, recreation, and leisure as an affirmative right.

# *Conclusion*

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- Many areas of commonality
- Similar premise, similar goals
- Substantial differences
- Expanding/enforcing existing legislation
- Creating new legislation

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- Resources and Acknowledgments
  - Finding the Gaps: A Comparative Analysis of Disability Laws in the United States to the United Nations Convention on the Rights of Persons with Disabilities. (National Council on Disability, May 12, 2008)