

Article

## ***Dis-Equality*: Exploring the Juxtaposition of Disability and Equality**

Bronagh Byrne

School of Social Sciences, Education and Social Work, Queen’s University Belfast, Belfast, BT7 1HL, UK;  
E-Mail: b.byrne@qub.ac.uk

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### **Abstract**

The (in)equality issues facing disabled people are extensive and long-enduring. The way(s) in which equality is conceptualised has important consequences for understandings of disability. The ambiguity of what I call *dis-equality* theory is two-fold; the apparent failure of mainstream equality theorising in, firstly, embracing disability concepts at all, and secondly, in fully incorporating the logistics of disability, particularly in relation to the social construction of such. Practices of institutional and more complex forms of discrimination are part of those deeper structures of domination and oppression which maintain disabled people in positions of disadvantage. Everyday practices, in the ‘ordinary order of things’ (Bourdieu, 2000), continue to be misrecognised as natural and taken for granted. This article critically explores the complexity of *dis-equality* theorising utilising a Bourdieusian lens which explicitly incorporates complex and subtle forms of discrimination, and by examining the UN Convention on the Rights of Persons with Disabilities’ approach to equality. I argue that the way forward for *dis-equality* theorising in today’s rights based era must be one that considers the nuances of the ‘rules of the game’ (Young, 1990) if it is to be effective in challenging the inequalities to which disabled people have long been subject.

### **Keywords**

Bourdieu; disability; dis-equality; discrimination; equality; rights; UNCRPD

### **Issue**

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## **1. Introduction**

The (in)equality issues facing disabled people have been extensive and long-enduring. Research across the globe has echoed common refrains; that, in comparison to the non-disabled population, disabled people experience significantly higher levels of poverty, unemployment, educational underachievement, lack of access to services, inappropriate housing, and poorer health outcomes (Groce, Kett, Lang, & Trani, 2014; World Health Organisation [WHO], 2011). They are also more likely to be victims of crime, subject to abuse and excluded from political participation (Emerson & Roulstone, 2014; Schur, Kruse, & Blanck, 2013). These experiences can be exacerbated when disabled people occupy more than one disadvantaged identity category (Byrne, 2012; Crock, Ernst, & McCallum, 2014). The extent and range of inequalities

experienced by disabled people has generated increasing attention in the context of austerity, neoliberal discourse, and, particularly in the UK, the 2015 investigation by the United Nations Committee on the Rights of Persons with Disabilities (CommRPD) into allegations of ‘grave or systematic violations’ of disabled people’s human rights.

Yet disability and equality remain uneasy bedfellows. The challenges disability poses for equality theorising are the focus of this article. Whilst a range of inequalities are evident, equality theorising in the context of disability remains in its infancy. The ways in which equality has been conceptualised, both generally, and in a disability context, has been unhelpful in advancing meaningful equality for disabled people or in challenging the deeply complex forms of exclusion and discrimination that they experience. Well-meaning equality concepts can in them-

selves become part of the disabling framework they purport to challenge through their extensive failure to challenge taken for granted discourses.

This article argues that a more nuanced understanding of the particularities of disability and equality requires exploration of subtle forms of discrimination. The limited applicability of current equality theorising to disability is problematised and the term *dis-equality* is introduced as a means of illuminating the juxtaposition between equality and disability. Disability Studies has a rich and vibrant history of challenging the marginalisation of disability from academic debates, and of theorising the range of oppressive practices that disabled people experience (Barnes, 1991; Finkelstein, 1980; Goodley, 2010; Shakespeare, 2013). The article builds on that work by exploring the complexity of *dis-equality* theorising using a Bourdieusian lens. It also draws on the human rights framework as explicated by the UN Convention on the Rights of Persons with Disabilities (UNCRPD) to provide further insight into contemporary equality concepts and questions the extent to which these are grounded in 'safe' or conservative equality discourse. The article concludes by arguing that the way forward for *dis-equality* theorising in today's rights based era must be one that unpacks the nuances of the 'rules of the game' (Young, 1990) if it is to be effective in challenging the inequalities to which disabled people have long been subject. In other words, *dis-equality* must challenge the largely taken for granted and internalised ways of being and doing (the 'rules') of the world in which we live (the 'game').

## 2. In Whose Name? The Contradictions of Equality

The tenacity and cumulative nature of inequalities have generated a reinvigorated examination of the concept of equality. Yet disabled people have not been routinely included as subjects in mainstream liberal equality theorising and jurisprudence (Silvers, 1994, in disability studies see, for example, Kittay, 2005, 2007, 2011; Kristiansen, Vehman, & Shakespeare, 2009). Social inequality can be understood as a relation between a majority in whose interests the instruments and systems of a society have developed over time, and minorities who have been marginal to the design and operationalisation of these for a variety of reasons. By conceptualising the non-disabled population as the 'majority' group and the disabled population as the 'minority' group in society, the relevance of equality frameworks for disability are evident. It is this approach which underpins this discussion. The need for *dis-equality* emanates from the specific experiences and characteristics of disability. The linguistic convention of *dis-equality* is here defined and used as a means of illuminating and addressing the intricacies and complexities of equality theorising in relation to disability and vice versa; that is, the juxtaposition of disability and equality. The separation of equality and inequality into distinct concepts is not helpful and fails to consider how equality itself is often socially constructed, and ways

in which equality mechanisms/tools, can in themselves become unconscious perpetrators of inequalities.

The reasons objecting to inequality are manifold. Scanlon (1997) identifies a number of reasons behind objections to inequality. Firstly, humanitarian concerns seek to eliminate inequalities to assist the alleviation of suffering or deprivation. Secondly, inequalities can reinforce stigmatisation and feelings of inferiority and domination. Thirdly, inequalities can lead to excess and unacceptable forms of power. Nagel (1977) identifies two arguments expressing the intrinsic value of equality. The communitarian view perceives equality as good for society as a whole, enabling feelings of solidarity. In contradistinction, the individualistic view perceives equality as a distributive principle and a way of meeting conflicting needs and interests in society. The relevance to disability can be easily ascertained across these dimensions despite its absence in mainstream equality theorising.

The question of why we should pursue equality is insufficient. We need to consider the question of why which equality, or more succinctly, 'equality of what?' (Sen, 1992) since "the answer we give to 'equality of what?' will not only endorse equality in that chosen space, but will have far-reaching consequences on the distributional patterns in other spaces" (Sen, 1992, p. 21). For example, to pursue equality of opportunity may lead to inequality of economic outcome. Baker, Lynch, Cantillon and Walsh (2004) have illustrated how there is no shortage of potential answers to the type of equality we should consider. Indeed, "it follows that far from being a single idea, equality refers to countless ideas, which may have very different implications and may even be incompatible" (Baker et al., 2004, p. 22). Yet disability has been conspicuously absent from these primary discussions.

While space prohibits in-depth discussion of the entire field of mainstream equality theorising, it is useful to highlight some that have been the most dominant over time. The concept of distributive justice, for example, has been outlined by Arneson (1993):

The concern of distributive justice is to compensate individuals for misfortune. Some people are blessed with good luck, some are cursed with bad luck, and it is the responsibility of society—all of us regarded collectively—to alter the distribution of goods and evils that arises from the jumble of lotteries that constitutes human life as we know it....Distributive justice stipulates that the lucky should transfer some or all of their gains due to luck to the unlucky (cited in Anderson, 1999, pp. 289–290).

Similarly, Cohen (1989) contends that distributive justice is concerned with the distinction between 'luck' and 'choice' in relation to compensation and where any resulting inequalities reflect choices made rather than individual misfortune. The most well-known theory of distribution is Rawls' (1971) 'difference principle' which grants lexical priority to the worst off, but also allows for in-

equalities of office so long as these have been attained under 'fair equal opportunity'. In proposing this theory, Rawls neglects disability and subscribes to the idea of a 'normal' human being. Indicative of the time in which he was writing, this offers us an insight into the way in which the relationship between disability and equality has been fraught with tension. Rawls assumes that:

All citizens are fully co-operating members of society over the course of a complete life. This means that everyone has sufficient intellectual powers to play a normal part in society, and no-one suffers from unusual needs that are especially difficult to fulfil, for example unusual and costly medical requirements. (Rawls, 1980, pp. 545–6)

Deviations from the 'norm' are understood as 'unusual' and 'costly', and equated with individual 'suffering'. Dworkin (1996) moves away from a Rawlsian approach to one that proposes equality of resources. An equal distribution of resources is one that is 'envy-free' where no-one 'envies' the resources others have. Dworkin incorporates compensatory mechanisms to take account of the differences in impersonal and personal resources whereby personal capacities are perceived to be the result of 'bad brute luck' (Dworkin, 1996). This approach has been subject to much criticism on the grounds that it focuses on the resources people hold rather than what they are able to do with these resources or how they are able to convert them (Anderson, 1999). Dworkin seeks only to compensate individuals for resource deficiencies and not on the basis of expensive or involuntary tastes. The problem of 'expensive' versus 'involuntary' needs is not acknowledged. This is significant since some disabled people may have *involuntary* expensive needs and require greater resources to achieve similar welfare levels or opportunities.

The conceptualisation of distributive justice in its various forms, has incorporated and reinforced medicalised understandings of disability. None have progressed the case for a positive and empowering understanding of disability, focusing instead on disability as the 'other'. The language adopted (where disability is mentioned) embed further, conceptualisations of disability that equality theorising should seek to challenge. Cohen for example has talked of 'Tiny Tim' (1989, p. 917) and 'the needy cripple' (1993, p. 16) while Dworkin (1996) has referred to the 'unfortunate'. Where equality theories that emphasise the distribution of something, also fail, is in their inherent belief that the sources of inequality result from the 'natural' order. This further individualises the 'problem' as disability is perceived to be inevitable rather than subject to majority/minority relations whereby the cultural arbitrary is presented as non-disabled and 'healthy'.

Equality of opportunity has received increasing legitimacy as evidenced in legislation such as the *Equality Act 2010* in Britain and *Section 75* of the *Northern Ireland Act (1998)*. Its legitimisation has been based on un-

derstandings or 'myths' of meritocracy, fair competition and 'possessive individualism' (McLaughlin, 2005). Like other forms of equality, equality of opportunity can be interpreted in various ways. Anderson (1999) contends that 'luck egalitarians' have attempted to deal with some of their critiques by moving from equality of outcome to equality of opportunity so that people only start off with equal opportunity to achieve welfare or advantage. This is evidently incompatible with equal outcome. Different groups may have different resources or capital, motivations, characteristics, or use resources in different ways. Equality of opportunity is further problematic as it ignores "the fact that cumulative disadvantage makes it difficult for members of out-groups to attain the prerequisite merit criteria" (Fredman, 2002, p. iii). Nor does it take sufficient account of the legacies of disadvantage and oppression faced by disabled people prior to entering the social field where equal opportunity is being articulated. For Fredman, the equal opportunities principle is underdeveloped and "it is crucial not just to open the gates, but also to equip people to proceed through them" (Fredman, 2002, p. 12). Thus, opportunities for disabled people do not necessarily relate to substantive outcomes or practices.

This overview and critique is intended to demonstrate that, with few exceptions, mainstream equality theorising has not been inclusive of disability. The dominant discourse has been a type of equality that is grounded in conceptions of an individual with perceived 'normal' abilities, wherein differences in ability are medicalised, and related barriers positioned as 'natural' or glossed over. As such, dominant equality theorising has in fact contributed to the inequalities that disabled people experience by positioning this group outside of equality norms, relegating disability to the margins and ultimately disconnecting disability from equality debates. It is through the concept of *dis-equality* that this article seeks to make these connections explicit.

### 3. Developing *Dis-Equality* through a Bourdieusian Lens

The work of Pierre Bourdieu has much to offer *dis-equality* and in helping move beyond the hitherto minimal consideration of disability in equality theorising. A Bourdieusian framework can provide the supportive architecture needed to uncover the concealed and taken for granted aspects of majority/minority relations impacting upon the lives of disabled people. Bourdieu's analysis of class enables his key concepts to be effectively applied and utilised in the exploration of disability. Aside from, for example, Riddell, Tinklin and Wilson (2005), Edwards and Imrie (2003), Holt (2010), and Holt, Bowlby and Lea (2013), application of this perspective within disability studies is noticeably sparse despite the potential for theoretical advancement.

At the core of Bourdieu's framework are the concepts of 'habitus', 'capital' and 'field'. Together these constitute

Bourdieu's theory of 'practice'. This theory of practice is central to the exploration of the dialectic between objectivity and subjectivity; the individual and society (Bourdieu, 1977) and, ultimately, in facilitating an understanding of the roots of *dis-equality*. According to Bourdieu, action, or practice is not merely a mechanical response to objective structures but is mediated by the *habitus*, the field and the availability of forms of *capital*. The Bourdieusian juxtaposition of objectivity and subjectivity can be expressed in the following way:

$$[(\text{habitus})(\text{capital})] + \text{field} = \text{practice}$$

(Bourdieu, 1984, p. 101)

Within the context of this article, the formula can be illustrated more specifically:

$$[(\text{habitus of disability})(\text{capital})] + \text{field} = \text{the practices of disability}$$

The emergent practices therefore become "collectively orchestrated without being the product of the orchestrating action of a conductor" (Bourdieu, 1977, p. 72). Bourdieu's 'habitus' exists in the minds of actors. The habitus of disability, as practiced by both disabled and non-disabled people, can be understood as the product of the internalization of the structures of the social world (Bourdieu, 1989, p. 18) and refers to:

[S]ystems of durable, transposable dispositions, structured structures predisposed to function as structuring structures, that is, as principles which generate and organize practices and representations that can be objectively adapted to their outcomes without presupposing a conscious aiming at ends or an express mastery of the operations necessary in order to attain them. (Bourdieu, 1990b, p. 53)

As both structuring and structured, the habitus of disability can be transmitted by experiences, processes and institutions, but can in itself generate thoughts and action. While action may have the *appearance* of rational behaviour, this is in effect guided by a 'feel for the game'. Hence, the apparent 'rationality' of, for example, disabled people in 'choosing' between limited educational or employment options is unconsciously guided by that 'feel for the game' and the associated internalisation of social structures. The 'performative visions' or imagined possibilities (Bourdieu, 2000) that emerge are not infinite but exist within a 'structured space of possibilities' (Postone, LiPuma, & Calhoun, 1993, p. 4). These probabilities in the context of disability can be understood as being further mediated by explicit barriers and inaccessibility.

The dispositions inculcated within the habitus leads to the individual 'knowing one's place' (Bourdieu, 1990a, 1990b, 2000), and the 'others' place, that is, the place of the non-disabled majority, and which can be maintained by processes of *misrecognition*:

The sense of one's place is a practical sense..., a practical knowledge that does not know itself, a 'learned ignorance'...which, as such, may be the victim of that particular form of misrecognition (*allogoxia*), consisting in mistakenly recognizing oneself in a particular form of representation and public enunciation of the *doxa*. The knowledge supplied by incorporation of the necessity of the social world, especially in the form of the sense of limits is quite real, like the submission which it implies and which is sometimes expressed in the imperative statements of resignation: 'That's not for us'... (Bourdieu, 2000, p. 185).

For this reason, a disabled person may, in exploring imagined possibilities of desired social roles, career prospects or citizenship, perceive those readily available to non-disabled people as 'not for the likes of us'. Such perceptions can be continually reinforced by outside agents such as teachers, parents and wider cultural assumptions as well as institutional discourses of disability and (in)equality. Understandings about ways of 'being' and 'doing' and related social divisions become naturalised and enable the familiar world or cultural arbitrary to be taken for granted. It is this naturalisation which emerges as part of those deeper structures of domination and oppression and which resound further than those physical barriers which may be initially more evident. These deep structures can become self-perpetuating and difficult to challenge given their apparent naturalised state. While acknowledging that the habitus is not 'destiny' (Bourdieu, 2000, p. 180), the dispositions constituting the habitus are durable and cannot be easily transformed. This contention appears to maintain the dominated in a position of 'doxic submission' with little opportunity of effectively challenging their location. Yet we could argue that disabled people, and the disability movement, have been actively challenging the inferior identity they have been ascribed. By the same token however, progress remains relatively slow despite ongoing challenge and it is this which Bourdieu refers to as 'durable', since it takes time for the habitus of both the disabled and non-disabled populations to be reconstituted. Even where the dominant cultural arbitrary is challenged, it will not be until the habitus of the non-disabled population is effectively transformed via the internalisation of 'new' dispositions that we will see substantive change.

The habitus of disability is mediated by the accumulation, possession and convertibility of various forms of 'capital'. The forms of 'capital' to which Bourdieu refers are resources upon which individuals and groups draw and utilise in order to maintain or enhance their (involuntarily ascribed) positions in the social order. These resources include economic, social and cultural capital. The possession and legitimation of these forms of capital, cultural capital in particular, by the dominant or non-disabled majority, dictates what is 'normal' and what is not. The spoken competences demanded by the cultural arbitrary, for example, makes it difficult for sign language

users to participate across fields on an equal basis with their non-disabled peers. This is especially relevant when analysing the educational experiences of young deaf people who are sign language users and whose linguistic difference makes capital accumulation and conversion problematic. Mainstream education also assumes familiarity with the cultural arbitrary, in this context dominated by the non-disabled majority and becomes manifest in forms of teaching and assumed knowledge, being able to access classroom situations and resources without hindrance, and familiarity and usage of written and spoken English. Non-disabled people are thus able to effectively utilise those educational opportunities which are presented to them in contrast to the struggle experienced by those who are disabled by the construction of cultural norms. The legitimisation of these norms is continuously reinforced by emphases on concepts such as equality of opportunity and meritocracy.

As Edwards and Imrie (2003) postulate, the 'impaired' or 'disabled' body itself becomes a 'bearer of value' or a form of physical capital, and greater value is bestowed on the 'body beautiful' of the non-disabled majority. The possession of capital then, has a symbolic dimension which facilitates the "cognition, communication and social differentiation of power relations" (Bourdieu & Passeron, 1977). This form of symbolic capital, or rather, the symbolic effects of capital, becomes an instrument of recognition, and by the same token, misrecognition, of relations between disabled and non-disabled populations (see above). Thus, the non-disabled body can become misrecognised (or mistakenly accepted as) as superior or of greater value, and perpetuated through, for example, the media. What is of significance here, is not just the potentialities of capital, but their subsequent effects. For disabled people, negative symbolic capital becomes manifest as a form of symbolic domination. As Bourdieu has argued, "there is no worse dispossession perhaps..., than that of the losers in the symbolic struggle for recognition, for access to a socially recognized social being, in a word, to humanity" (2000, p. 241).

The habitus of disability and forms of capital interact with the 'field' to produce outcomes, or *practices of disability*. The 'field' is a social microcosm constitutive of a set of objective structures and competitive positions in which the habitus of disability operates. This can refer to the field of learning, employment, independent living and so on. The largely invisible relations between individuals and groups in a particular field are contingent upon relations of power and capital (Bourdieu & Wacquant, 1992). The field becomes a site of struggle and conflict over the application of resources in a bid to maintain or enhance existing positions in the social order. Each field then, provides us with a relational frame of reference through which practices, inequalities, and ultimately, *dis-equality*, can be analysed. It is further illustrative of the ways in which complex forms of discrimination can emerge.

#### 4. *Dis-Equality* and Complex Forms of Discrimination

Discourses of equality articulated by institutions and legal or regulatory texts can be understood as objectifications of dominant world visions. These discourses can be much less challenging than they might appear when we begin to analyse them in detail. In some cases, they can emerge as strategies of conservation or 'safe' equality. In other words, legislation and policies can be framed in a way that enables the continued legitimisation of existing practices. Legislation and policies are not value free but contain implicit messages about majority/minority social group relations. In so doing, they become part of the routine regimes that enable complex forms of discrimination to persist, that is, of institutional and systemic discrimination (McLaughlin, Khaoury, & Cassin, 2006). Institutional practices routinely create inequality while systemic discrimination emanates from the taken for granted 'rules' of everyday practice(s). These 'rules' are part of the regimes of social action, or in Bourdieusian terms, part of the 'immanent structures of the game'. These routine regimes then, are part of those deeper structures of domination and oppression with which *dis-equality* should be concerned.

The language of complex forms of discrimination has much to offer *dis-equality*. Loosely defined as 'diffuse, implicit and collective rather than individual', complex forms of discrimination can be understood as those "pervading patterns in social practices which serve to exclude, devalue or disadvantage individuals sharing a minority group trait" (McLaughlin et al., 2006, p. 1). McLaughlin et al. suggest that these practices are unlikely to be intentionally discriminating given that they arise out of those 'day-to-day norms' and the taken for granted. It is precisely this which is highlighted by Bourdieu when he argues "the dominant class have only to let the system they dominate take its own course in order to exercise their domination" (Bourdieu, 1977, p. 190). Thus domination, and complex forms of discrimination, can occur below the level of individual consciousness. Achieving equality for disabled people in a system where the game has already begun, and where the rules and standards have already been set, is evidently contradictory since it implies a form of equality that enables disabled people to 'fit in' with an already constructed society and associated social systems, that is, a form of equality which fails to radically challenge the root of all inequalities. To do so implies changing a system that already works to the apparently legitimate advantage of the majority non-disabled population and on the basis of institutional 'mastery of the game' (Bourdieu, 2000, p. 230). Until there is a sense of need for the majority population to change deeper structures of domination and oppression and to instigate this change, complex forms of discrimination as experienced by disabled people in our society will prevail.

Discourses of equality in a disability context remain heavily influenced by 'regulatory texts' (Smith, 2005), that is, by textual representations of equality as legisla-

tively expressed. Such texts are significant since they “continue to authorise and subsume local particularities resulting from the work of translation” (Smith, 2005, p. 199); they can set the scene for ‘safe equality’. Legislation and policies such as the Disability Discrimination Act (1995) (DDA), Equality Act (2010), and the Special Educational Needs and Disability Act (2002) (SENDA) in the UK can be viewed as falling into this trap. For example, the medicalised definition of disability contained within these frameworks ‘contradicts many of the principles of the liberal equality framework’ (Woodhams & Corby, 2003, p. 159). Further, the DDA allowed failure of reasonable adjustments<sup>1</sup> to be justified in certain circumstances (Lawson, 2008). Indeed, what is ‘reasonable’ depends on a range of factors, including how practicable it is for, for example, the employer to make the adjustment, the cost of making it, the extent of any disruption to its business activities, the organisation’s financial resources and how effective the adjustment would be in overcoming the individual’s disadvantage. To put it another way, disabled people are immediately put at a disadvantage given the construction of the ‘game’ (or society) by and for a non-disabled majority. Equality instruments such as those above have fitted in or around the status quo rather than attempting to seriously challenge it. This can allow for change to be encroached in ‘safe’ ways that are favourable to the cultural arbitrary (for example, on the grounds that change would be ‘unreasonable’ or disruptive to business activities). This inadequacy is archetypal of *dis-equality* instruments in today’s society. The utility of a Bourdieusian framework in understanding the processes of legitimation inherent within legislative developments is central.

The UNCRPD can be understood as the most important contemporary regulatory text on *dis-equality*. It builds on the growing recognition by other treaty bodies such as the UN Committee on Economic, Social and Cultural Rights (2009), of systemic, cumulative and intersectional discrimination. The UNCRPD makes extensive references to equality and non-discrimination. A definition of discrimination is set out in Article 2 while for the first time in a human rights instrument, Article 2 defines ‘reasonable accommodation’ as:

Necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

Article 5 UNCRPD sets these terms in their context. Article 5(3) obliges States Parties to take all appropriate steps to ensure that reasonable accommodation is provided in the pursuit of equality while Article 5(4) enunciates that: ‘Specific measures which are necessary to accelerate or

achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention’.

All provisions of the UNCRPD must be read in light of Article 3 (General Principles). Whilst 3(b) explicitly sets out non-discrimination as a general principle alongside equality between men and women (3(g)), the remaining six principles constitute variants of the equality principle, encompassing the concepts of dignity and autonomy (3(a)), participation and inclusion (3(c)), respect for difference (3(d)), equality of opportunity (3(e)) and, in applying equality to disability; accessibility (3(f)). The remainder of the UNCRPD makes consistent references to ensuring the rights of disabled people ‘on an equal basis’ to non-disabled people. Substantively, the UNCRPD contains a wide range of economic, social, cultural, civil and political rights, covering areas such as education, health-care, home and family, accessibility, mobility, information, political participation, and protection from inhuman and degrading treatment. By bringing these rights to the fore, the UNCRPD makes their applicability and relevance to the lives of disabled people clear. The fact that disabled people themselves were actively involved in the negotiation and drafting of the treaty further strengthens the inclusivity of and responsiveness of the treaty to disabled people’s lived experiences.

These provisions are to be undoubtedly welcomed. They provide further recognition and insight into the metrics of substantive equality in a disability context and a much more rounded approach to *dis-equality* than has hitherto been taken. This article argues however, that in recognition of the long battle which preceded the UNCRPD’s adoption, we must continue to be responsive and to push the boundaries of *dis-equality*. The UNCRPD and its typified rights is no doubt itself a challenge to and for the dominant cultural arbitrary who are obliged to make the UNCRPD rights real. However, we must also be mindful of the power of the UNCRPD as a regulatory text. To assume that a treaty, simply because it has been adopted, is value-free would be naïve. To maximise the UNCRPD’s power as a tool for change for disabled people it is important to be aware of and engage with any barriers to the UNCRPD’s potentialities whether implicit or explicit. The use of well-recognised equality concepts around discrimination, equality of opportunity, and ‘on an equal basis with others’ is arguably reflective of the cultural arbitrary on which the international human rights community is structured and into which *dis-equality* is expected to fit. In other words, these well-established equality tools have already been developed and debated by and for the non-disabled majority in the context of mainstream equality theorising as highlighted in Section 2 above. We have no guarantee that these concepts will always be interpreted at State level in a way that is meaningful for disabled people or as intended by the UNCRPD’s drafters. Facilitating access to rights on ‘the same basis as’ non-

<sup>1</sup> Equality legislation in the UK uses the phrase ‘reasonable adjustment’ to denote changes to practices or procedures that may be required while the CRPD uses the term ‘reasonable accommodation.’ See next paragraph for further details.

disabled people fails to recognise and challenge the extent to which initial rights accorded to non-disabled people now form the taken for granted rules upon which everyday practices are based. The author is not suggesting that some kind of new or different rights need to be established, rather, in order to move forward in equality and rights discourse, we need to remember where we have come from and that being explicitly granted rights 'on the same basis' as non-disabled people is further indicative of the way in which disabled people have entered the equality and rights 'game' after it has already begun and wherein the now naturalised 'rules' (practices and rights) have been based on non-disabled ideals.

International human rights law plays a critical role in legitimating new or challenging existing 'norms'. So too can they risk facilitating little more than assimilation with the dominant culture or espousing 'safe' equality if existing programmes, standards, activities, services and ways of being and doing are presented as meritorious. Similarly, as noted in Section 2, equality of opportunity assumes that fair competition can exist, that the rules of the competition are fair, and that the outcome of the competition is also fair. What the UNCRPD does not do, in relation to the latter concept, is specify precisely how the competition can be made fairer in the context of disability. Thus, assumptions of cultural familiarity risks continuing to be maintained while inequalities of condition are ignored, and the naturalisation of prescribed standards misrecognised. Whilst indicative of the importance of substantive equality, the concept of reasonable accommodation is also problematic. What is understood as 'reasonable' by one State Party may differ from another. As Mégret and Msipa (2014, p. 265) note, there 'is *a priori* something inherently contentious about what constitutes 'reasonable' accommodation'. Consideration also needs to be paid to what constitutes an 'undue burden' to the duty-bearer. Implicit within understandings of justifiable discrimination and reasonable accommodation is the idea that disabled people and their needs are both burdensome and expensive and wherein the notion of reasonableness and its subjective parameters risks becoming something of a safety net and/or an institutional conservation strategy against structural change.<sup>2</sup> Concepts of reasonable accommodation whilst purporting to offer a solution to exclusionary practices, can themselves become a barrier to inclusion and equality by designating some disabled people, and those with more complex needs in particular, as having needs that are 'unreasonable', 'too costly' and 'too burdensome'. Whilst viewed as a key avenue through which disabling barriers can be eradicated and of achieving substantive equality, the continuing justification for practices that are clearly discriminatory, but 'unreasonable' to remove, once again risks locating the 'problem' of disability with the individual who, but for their costly requirements perceived as resulting from individual need, would be 'able' to fully participate.

While the UNCRPD is a set of international standards, it is, to a large degree, interpreted and implemented by State parties at national levels, at least until meaning is elaborated upon by the CommRPD in its General Comments and/or Concluding Observations. In this way, the UNCRPD has the potential ability to emerge as the 'friend', not 'foe' of the cultural arbitrary if obligations can be interpreted in a way that is favourable to a State party. This resonates with Bourdieu's argument that "law does no more than symbolically consecrate...the structure of power relations among the groups and the classes that is produced and guaranteed practically by the functioning of these mechanisms" (Bourdieu, 1990b, p. 132). This is not to say that the UNCRPD does so consciously, but to highlight that it is not enough to espouse agreed aims and substantive rights, Rather, the underlying assumptions on which they can be based must be critiqued and challenged where needed and the way(s) in which they should be interpreted should be made explicit.

Some of this work is already being carried out by the CommRPD through the medium of its General Comments and Concluding Observations. Given the limited resources of CommRPD and the time it will take through to get through the initial reports of the 175 countries who have ratified to date, progress will be gradual. The CommRPD which constitutes a majority of disabled people creates a critical strategic space for the habitus of disability to be challenged among both disabled and non-disabled people, and for new imagined possibilities and performative visions to emerge. As highlighted in Section 3, it takes time for durable dispositions or mindsets to change. The UNCRPD and its Committee has a critical role to play in facilitating this change. The composition of the Committee in particular can help create direct ownership of the UNCRPD by the disability community globally and provide added legitimacy to the interpretation of UNCRPD rights. This has arguably been reaffirmed by Committee members' noted celebration of the extent of involvement by disabled people's organisations in the first UNCRPD examination of the UK in August 2017. Perhaps this is a moment in history where we see some of those durable dispositions vociferously and continuously challenged. Nonetheless, we must also be mindful of other issues that can emerge; while the CommRPD constitutes a majority of disabled people, at the time of writing, seventeen of the eighteen committee members are male.

## 5. Conclusion

The intricacies of 'equality' across social groups are without doubt, compelling. It is clear from research (WHO, 2011; Emerson & Roulstone, 2014; Schur et al., 2013) that inequalities abound for disabled people across a multitude of domains. The immediate barriers around accessibility, attitudes, and awareness are indicative of a

<sup>2</sup> At the time of writing, a general comment on equality and non-discrimination is being drafted by the Committee on the Rights of Persons with Disabilities. A Day of General Discussion on this issue was held on 25 August 2017.

greater symptomatic cause; that of underlying complex forms of discrimination and the concealed power that underpins majority/minority relations. Yet attempts to redress these issues through equality theorising have been scant or inadequate. Questioning existing constructions of equality is important if we are to confront ideological influences and challenge their effects. So too must complex forms of discrimination be extensively identified and turned around. The aim of this article has been to illuminate the juxtaposition of disability and equality through a Bourdieusian lens. It does not claim to have addressed all the issues, but rather to create space for a more nuanced understanding of *dis-equality* and to further stimulate contemporary debate about the construction of practices of disability.

The location of complex forms of discrimination within a Bourdieusian framework facilitates exploration and challenge of those dominant cultural norms and institutional structures which have for so long categorised disabled people as innately different. The application of complex forms of discrimination to *dis-equality* theorising ultimately enables the complexity of the relationship between disability and equality to be explored by identifying the taken for granted and immanent rules on which majority/minority relations are constituted in a society designed by and for a non-disabled majority. It thus offers much potential in dissecting the nuances of social practice as experienced by disabled people.

The UNCRPD goes some way to mediating existing terms and conditions for disabled people. Such a rights based approach is an example of a more measured approach to *dis-equality* than has hitherto been the case. However, we must not be complacent. Many challenges remain, and effective implementation of these legitimised rights is an ongoing battle. The typified UNCRPD rights, by virtue of their inclusion, can be perceived as the optimum solution to the marginalisation, discrimination, and inequalities that disabled people experience, yet they risk being based on a so-called ideal cultural arbitrary that takes non-disabled roles and bodies as its prototypes. There is a need for debate on whose vision of rights a rights discourse is based upon. If no previous human rights treaties existed and the UNCRPD was the first to introduce any equality related concepts, what would this look like? Given that the UNCRPD is based on, and builds upon existing human rights treaties, there is a risk that it further naturalises the existing human rights framework, itself based initially, through the Universal Declaration of Human Rights (1948), on a conception of an able-bodied rights holder. Care must be taken to ensure that the UNCRPD does not become entrenched in forms of safe equality or institutional conservation strategies by virtue of the interpretive power of States parties. Nevertheless, it is heartening that the Committee appears to be taking greater cognisance of the complex forms of discrimination that can emerge by referring to it in its work to date through, for example, General Comments and Concluding Observations. Irre-

spectively, open and enabling conversations need to take place about what equality really means in the context of disability, and the extent to which equality theorising can be inclusive of the needs of all disabled people. We would do well to revisit and progress the hitherto legitimised equality discourse to address contemporary gaps and challenges so that equality theorising can itself be reflective of the equality it seeks to achieve.

### Conflict of Interests

The author declares no conflict of interests.

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### About the Author



**Bronagh Byrne** is Lecturer in Social Policy at Queen's University Belfast, Northern Ireland, UK. She is Co-Chair of the University's Disability Research Network, a multi-disciplinary initiative aimed at enhancing collaboration between academics, policymakers, practitioners and community and voluntary sector organisations with an interest in disability studies and research. She is also Co-Director of the Centre for Children's Rights at Queen's. Her research expertise lies in the implementation of international human rights law in relation to disability and children's rights.