



This work is protected by copyright and other intellectual property rights and duplication or sale of all or part is not permitted, except that material may be duplicated by you for research, private study, criticism/review or educational purposes. Electronic or print copies are for your own personal, non-commercial use and shall not be passed to any other individual. No quotation may be published without proper acknowledgement. For any other use, or to quote extensively from the work, permission must be obtained from the copyright holder/s.

Through Merryman's Window: The potential of English undergraduate liberal legal education to create proactive critical citizens and advance disability rights

Abigail Victoria Pearson

PhD

Keele University

March 2019

Abstract

This thesis explores the potential of English undergraduate liberal legal education to increase legal consciousness about the rights of people with disabilities in response to low levels of awareness of these rights throughout society. Including disability discussions throughout the curriculum rather than in separate courses, using a critical perspective and including critical pedagogy, will equip students with the skill to critique the existing framework and to call for change where necessary. Including disability in this context aims to reaffirm the relationship between rights and education, to overcome the shortcomings of previous approaches and to help fulfil the educative aim of the human rights framework concerning disability at all levels. This discussion extends recent work concerning the integration of disability specific courses within vocational legal education, as has been explored in both British and American literature. It shifts the focus of previous work from incorporating disability perspective and awareness from vocational to liberal legal education. An increased focus at the academic stage of legal education could lead to wider dissemination and understanding which may lessen the need for legal intervention in the future. In doing so, it will argue that the concept of reasonable adjustment should be challenged to shift focus to the concept of ‘Assurance of Rightful Access.’

Acknowledgements

There are many people to thank. Family and friends, who listened over and over to ideas and worries without complaint. My supervisors, Professor Tony Bradney and Dr Eliza Varney. Eliza, for igniting my passion for and knowledge of disability rights law and giving me the confidence to develop my own ideas. Tony, for introducing me to many new ideas. Ellie Davis, my support worker, who has typed every word of this thesis from dictation, collected every book I requested from the library and taken reams of notes at conferences and supervision meetings, I literally could not have reached this point without her.

Contents	
Abstract.....	i
Acknowledgements	ii
Table of cases	vi
Table of Legislation and Declarations	vii
Table of abbreviations	xi
Introduction	1
Research Questions:.....	11
Outline:.....	12
Chapter 1: Literature Review	14
Disability	15
The Development of Disability.....	15
Citizenship.....	18
Dignity.....	29
Morality	32
Law	34
Legal Consciousness	38
Why Liberal Legal Education?.....	43
Previous Studies.....	58
Conclusion.....	70
Chapter 2: Theoretical Framework.....	71
Critical Theory	71
Critical Disability Theory (CDT).....	73
Proactive Critical Citizenship.....	77
Assurance of rightful access.....	81
Critical Legal Theory.....	85
Critical Pedagogy, Legal Education, Values and Rights.....	87
Variable Factors	102
Changes to project design and rationale.....	102
Reflections on the recruitment process.....	105

Methodology	111
Critical Discourse Analysis (CDA).....	111
Language	116
Conclusion.....	117
Chapter 3: The International framework and the CRPD	118
Dignity.....	118
Status	121
Participation.....	124
Education as a form of participation and a means to advance, promote and protect the human rights of people with disabilities	127
Thematic issues	133
Status	133
Economics.....	135
Reasonable Adjustment and Undue Burden	135
The limits of the Legislative process.....	145
Limits of Legislation to produce change.....	145
Limits of Involvement of People with Disabilities – Issues of NGOs and DPOs.....	148
Human Rights and the provision of Education in practice	152
Conclusion.....	157
Chapter 4: EU Framework around disability from 1973-March 2017.....	159
Dignity.....	159
Status	159
Participation.....	172
Education as a form of participation and a means to advance, promote and protect the human rights of people with disabilities	174
Economics.....	178
Reasonable Adjustment and Undue Burden	180
Limits of Legislative Process.....	183
Conclusion.....	187

Chapter 5: UK domestic framework, access to liberal legal education and Proactive Critical Citizenship	189
Dignity.....	189
Participation.....	196
Education as a form of participation and a means to advance, promote and protect the human rights of people with disabilities	198
Thematic issues	214
Status	214
Economics.....	216
Reasonable Adjustment and Undue Burden	220
The Limits of the Legislative Process.....	231
Limits of Legislation to produce change.....	235
Conclusion.....	237
Chapter 6: Solutions	238
Dignity and Identity	238
The Introduction of Specialist Disability Modules.....	238
Modes of delivery: lectures or seminars?	240
Lectures and Access	246
Small group teaching.....	248
Classroom context.....	256
The Role of Universal Design	256
Participation.....	262
Economics.....	267
The Potential and Limits of Legislation to Produce Change.....	285
Conclusion.....	290
Chapter 7: Conclusion	292
Avenues For Future Work	294
Reflection on the Findings, Contribution and Limitations of this research	295
Appendix.....	298
Bibliography	379

Journals	379
Books.....	395
Websites	414
Case Law	445
Treaties.....	446
Acts/Conventions/Declarations/Directives/Resolutions.....	446
Other	451

Table of cases

Chacón Navas v Eurest Colectividades SA (2006) C-13/05.

Coleman v Attridge Law and Another [2008] OJ 2 303/06.

Cordell v Foreign and Commonwealth Office UKEAT/0016/11/SM

Cox v Post Office (case no. 1301162/97)

Donovan v Rana [2014] 1Pe CR 23 (CA)

Drury v McGarvie [1993] SLT 987

Paulley v FirstGroup Plc [2013] Leeds County Court Case 2YL85558

FirstGroup PLC v Paulley [2014] COA EWCA Civ 1573 para. 50

Paulley v. FirstGroup PLC [2017] UKSC

Hamilton v. Jamaica ___Communication No. 616/1995 7 July 1997

CCPR/C/60/D/616/1995

HK Danmark v Danske [2013] OJ 1 156/6.

Middletweed v Murray [1989] SLT 11

Pousson v British Telecom plc (2005 1 All ER (D) 34 (Aug) EAT).

Price v UK [2001] Application No. 33394/96 ECHR

Table of Legislation and Declarations

Abortion Act 1967

Child and Family Act 2014

Chronically Sick and Disabled Persons Act 1970

Convention Against Discrimination in Education 1960

Criminal Justice Act 2003

Disability Discrimination Act 2005

Declaration on the Rights of Disabled Persons 1975

Declaration on the Rights of Mentally Retarded Persons 1971

Education Act 1944 cl 57 (3)

Education (Handicapped- Children) Act 1970 cl 2

Equality Act 2010

European Charter of Fundamental Rights and Freedoms

Higher Education and Research Act 2017

Mental Deficiency Act 1913

Mental Deficiency Act 1927

Mental Health Act 1959

National Assistance Act 1948

Special Educational Needs and Disability Act (SENDA)

The Human Rights Act 1998

The Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010,

SI 2010 No 432 1 Schedule 1

The Public Service Vehicles Accessibility Regulations 2000, SI 2000 No 1970.

European Union (EU)

Treaty of Amsterdam

Treaty of Lisbon

Treaty of Nice

Treaty on European Union - Maastricht Treaty, Single European Act, Merger Treaty - Brussels Treaty, Treaties of Rome : EEC and EURATOM treaties, Treaty establishing the European Coal and Steel Community.

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

Directive of the European Parliament and of the Council on the accessibility of the websites and mobile applications of public sector bodies [2016] OJ 2 327/1 /1.

Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations [2007] OJ 2315/14/1.

Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 [2004] OJ 2 46/1.

Regulation (EU) No 181/2011 of The European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 [2011] OJ 2 55/1

United Nations (UN)

Draft Resolution II E/2003/26 Comprehensive and Integral International Convention to Protect and Promote the Rights and Dignity of Persons with Disabilities

International Covenant on Economic, Social and Cultural Rights (ICESCR)

ICESCR General Comment No. 13: The Right to Education (Art. 13) (1999)
Contained in Document E/C.12/1999/10 Para. 1

ICESCR General Comment No. 5

Salamanca Statement 1994

Standard Rules on the Equalization of Opportunities for Persons with Disabilities
1994

United Nations Convention on the Rights of Persons with Disabilities

UN Committee on the Rights of Persons with Disabilities, General Comment No. 4
on Article 24 : Right to inclusive education (2 September 2016), UN Doc,
CRPD/C/GC/4

United Nations Declaration on Human Rights Education and Training 2011
A/HRC/RES/16/1

Universal Declaration of Human Rights 1948

World Plan of Action on Education for Human Rights and Democracy (The Montreal Declaration) (1993)

Table of abbreviations

AAC – Assistive Augmentative Communication

ADA – Americans with Disabilities Act

BATA – British Assistive Technology Association

CRPD – Convention on the Rights of Persons with Disabilities

DDA – Disability Discrimination Act

DES – Disability Equaity Scheme

DPM – Disabled People’s Movement

DPO – Disabled People’s Organisation

DPULO – Disabled People’s User-Led Organisations

DRC – Disability Rights Commission

DSA – Disabled Students Allowance

DWP – Department of Work and Pensions

ECHR – European Convention on Human Rights

EQA – Equality Act

EU - European Union

ICCPR – International Covenant on Civil and Political Rights

ICESCR – International Convenant on Economic, Social and Cultural Rights

LSE – London School of Economics

NGO – Non-governmental Organisation

ODI – Office for Disability Issues

OFFA – Office for Fair Access

PVS – Persistent Vegetative State

SENDA – Special Educational Needs and Disability Act

TUC – Trades Union Congress

UCAS – Universities and Colleges Admissions Service

UDHR – Universal Declaration of Human Rights

UK – United Kingdom

UN – United Nations

UNDHRET – United Nations Declaration on Human Rights Education

VSO – Voluntary Sector Organisations

WPA World Programme of Action

Introduction

‘The examination of legal education in a society provides a window on its legal system. Here one sees the expression of basic attitudes about the law: what law is, what lawyers do, how the system operates or how it should operate. Through legal education the legal culture is transferred from generation to generation. Legal education allows us to glimpse the future of the society.’¹

Merryman emphasises the role and importance of legal education, to create a future society that is both equitable and rights focused. Consequently, legal education should reflect a multitude of different experiences and world views.²³ Despite recent efforts to increase representation, the experiences of students with disabilities have been overlooked. Previous work has focused mainly on physical or attitudinal barriers to higher education rather than considering cultural, attitudinal and practical exclusion at subject level.⁴ 2016 UCAS data indicates that numbers of students with various types of disability applying for Law degrees is increasing year on year.⁵ It is possible that these numbers are under-representative,⁶ as a number of authors have highlighted the

¹ J H Merryman, ‘Legal Education There and Here: A Comparison’ [1975] 27 *Stanford Law Review* 859.

² K Brooks and D Parkes, ‘Queering Legal Education: A Project of Theoretical Discovery’ (2004) 27 *Harvard Women’s Law Journal* 89.

³ A Francis, and I McFarlane, ‘After Dark and Out in the Cold: Part time Law Students and the Myth of ‘Equivalency’’ (2009) 36 *Journal of Law and Society* 220.

⁴ M Fuller. et.al. ‘Barriers to Learning: a Systematic Study of the Experience of Disabled Students in One University’ (2004) 29 *Studies in Higher Education* 303; T Tinklin S Riddell, A Wilson ‘Disabled Students in Higher Education’ (2004) CES Briefing No. 32/ M Madriaga, ‘Enduring Disablism: Students with Dyslexia and their Pathways into UK Higher Education and Beyond’ [2007] 22(4) *Disability and Society* 399; M Onnely and K Brocklemann, ‘Out of the Disability Closet: Strategic use of Perception Management by Select University Students with Disabilities’ (2003) 18 *Disability and Society* 35.

⁵ UCAS, ‘End of Cycle 2016 Data Resources DR3_023_01 Acceptances by subject group and disability’ (UK domiciled) (15 December 2016) <<https://www.ucas.com/file/84541/download?token=7VMwUL75>> (accessed 13 November 2017); UCAS, ‘End of Cycle 2016 Data Resources DR3_023_07 Acceptances by subject group and disability’ (UK domiciled) (15 December 2016) <<https://www.ucas.com/file/84551/download?token=n0GJxQEP>> (accessed 13 November 2017); UCAS, ‘End of Cycle 2016 Data Resources DR3_023_03 Acceptances by subject group and disability (Applications through the main scheme and UK domiciled)’ (15 December 2016) <<https://www.ucas.com/file/84546/download?token=apPf1m2->>> accessed 13 November 2017.

⁶ S Gibson, ‘Narrative accounts of university education: socio-cultural perspectives of students with disabilities’ (2012) 27(3) *Disability & Society* 356

reluctance of some students with disabilities to declare their status⁷ due to fear of negative reception⁸ or stigma.⁹ It is arguable that the need for Legal curriculum to represent people with disabilities is increasing.

Including disability discourse into legal education could contribute to the development of Proactive Critical Citizenship around disability. Proactive Critical Citizenship is based on the idea that citizens must be able to critique the law and its implementation to ensure that it fulfils its aims and stated purpose. The Montreal Convention stated the importance of human rights education for people with disabilities.¹⁰ However, UN Action Plans on the implementation of human rights education from the 2000's and beyond focus on the delivery rather than content for people with disabilities in terms of issues such as accessible format rather than the meaning of rights for people with disabilities.¹¹ Another weakness is that the Action Plans do not refer to disability but rather physical or mental conditions showing a medical rather than social model understanding contrary to recent legislative and academic developments around

⁷ A Jacklin, 'To be or not to be 'a disabled student' in higher education: the case of a postgraduate 'non-declaring' (disabled) student' (011) 11(2) *Journal of Research in Special Educational Needs*.

⁸ J Hargreaves and others, 'The preparation and practice of disabled health care practitioners: exploring the issues' (2014) 51(3) *Innovations in Education and Teaching International* 307, at 310.

⁹ See for example, A Liasidou, 'Critical disability studies and socially just change in higher education' (2014) 41(2) *British Journal of Special Education* 126; , L Habib and others, 'Dyslexic students in higher education and virtual learning environments: an exploratory study' (2012) 28(6) *Journal of Computer Assisted Learning* 579; T Mortimore and W. Ray Crozier, 'Dyslexia and difficulties with study skills in higher education' (2006) 31(2) *Studies in Higher Education* 248-249. See also S Riddell and E Weedon, 'Disabled students in higher education: Discourses of disability and the negotiation of identity' (2014) 63 *International Journal of Educational Research*.

¹⁰ World Plan of Action on Education for Human Rights and Democracy (The Montreal Declaration) (1993)

¹¹ UNGA, 'Fifty-eighth session Item 119 (b) of the provisional agenda' (24 July 2003) A/58/181, UNGA, 'Human Rights Council Advisory Committee, Third session 3-7 August 2009 Item 3 of the provisional agenda Requests Addressed to the Advisory Committee Stemming From Human Rights Council Resolutions Written statement submitted by Amnesty International (AI)' (30 July 2009) A/HRC/AC/3/NGO/3, UN ESC, 'Commission on Human Rights Sixtieth session Item 17 (c) of the provisional agenda Promotion and Protection of Human Rights: Information and Education United Nations Decade for Human Rights Education (1995-2004): Report on achievements and shortcomings of the Decade and on future United Nations activities in this area' (25 February 2004) E/CN.4/2004/93, UNGA, 'Fifty-fifth session Item 116 (b) of the provisional agenda* Human rights questions: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms United Nations Decade for Human Rights Education (1995-2004)' (7 September 2000) A/55/360, II (A) (8) and 142 (e), UNGA, 'Fifty-first session Agenda Item 110 (b) Human Rights Questions: Human Rights Questions, including alternative approaches for improving the effective enjoyment of Human Rights and Fundamental Freedoms' (12 December 1996) A/51/506/Add.1, 10(e), 85 and 87.

disability.¹² Failure to appreciate these developments suggests that drafters and implementors may struggle to target campaigns effectively to people with disabilities if they fail to understand the totality of disability outside of the individual. Furthermore, the language used to promote rights education is non-committal such as 'request,' 'reaffirms,' 'recommends,' 'encourages' and 'recalls.'¹³ Additionally, the list of protected characteristics does not include disability,¹⁴ suggesting a disparity in protection and attention compared with other groups. The Plan of Action for the second phase (2010-2014) of the World Programme for Human Rights Education (2010)¹⁵ presents in one area of the document an understanding of disability based on a medical model (focused on the medical condition of individuals),¹⁶ which is inconsistent with the social model approach in other areas, by referring to 'physical or mental condition'¹⁷, rather than disability. This may be indicative of the failure of those drafting policies surrounding human rights education for people with disabilities to understand the totality of the experience and impact of disability necessary to target campaigns effectively. The document acknowledges the role of higher education institutions in human rights education development and the need for a pan curriculum approach.¹⁸ Law is cited in documents as a key component and area for human rights education,¹⁹ yet there is inconsistent coverage of the human rights of people with disabilities within the subject at English institutions.²⁰

¹² United Nations Convention on the Rights of Persons with Disabilities (CRPD) Article 1

¹³ See for example Office of The High Commissioner for Human Rights, 'United Nations Decade for Human Rights Education (1995-2004) Commission on Human Rights resolution 2002/74'.

¹⁴ UNGA, 'Fifty-second session Agenda item 112 (b) Human Rights Questions: Human Rights Questions, including alternative approaches for improving the effective enjoyment of Human Rights and Fundamental Freedoms, United Nations Decade for Human Rights Education (1995-2004) and public information activities in the field of human rights Report of the Secretary-General Addendum Guidelines for national plans of action for human rights education' (20 October 1997) A/52/469/Add.1, 11(c)

¹⁵ UN, 'Plan of Action for the second phase (2010-2014) of the World Programme for Human Rights Education' (2010) (A/HRC/15/28, 27 July 2010).

¹⁶ M Oliver, *The Politics of Disablement* (Basingstoke: Palgrave Macmillan, 1990). 3-4

¹⁷ UN Plan of Action n. 15. para. 9(b)

¹⁸ *Ibid.* 28(a)(i)

¹⁹ *Ibid.* 26 (a)(i)

²⁰ University of Leeds, 'LAW3055 Disability Law'

<<http://leedsforlife.leeds.ac.uk/Broadening/Module/LAW3055>> (accessed 2 May 2017) and Bunbury, S., 'School of Law Department of Academic Legal Studies LLB Disability Law' (2014-15 University of Westminster) 3.

In 2011, the United Nations (UN) adopted Declaration on Human Rights Education and Training (UNDHRET).²¹ It enshrines the right of people with disabilities to receive human rights education and training.²² However, as a declaration it is as an expression of intent and direction for development only.²³ A Report on the Third Stage of how to strengthen implementation of human rights at all levels, and human rights training for teachers and educators, between 2015-2019,²⁴ focuses on citizenship education²⁵ and ‘ensuring that all the education components and processes, including curricula, materials, methods and training are conducive to learning about human rights’²⁶ makes this thesis timely.

Roulstone’s critique of the Disability Discrimination Act (DDA) indicates the need to familiarise all law student’s with a critical approach to law’s construction and effect, by highlighting prevailing attitudes towards disability in obiter dicta and it’s negative impact on the outcome of cases and this being presented as an element of law rather than attitudes and interpretation.²⁷ Roulstone argues this means that ‘Disabled people are never likely to be liberated by law, where this intellectual conceit is allowed to prevail.’²⁸ Incorporating disability perspectives into Liberal legal education presents a way for awareness of these issues to filter into the profession and other areas, ensuring maximum effect. Similarly, Corker critiques the reactive approach of anti-discrimination measures such as the DDA, arguing that they justify direct discrimination, maintaining the status quo in favour of the majority, rather than

²¹ 2011 United Nations Declaration on Human Rights Education and Training A/HRC/RES/16/1 Article 1 (1) and (3)

²² *Ibid.* Article 5(2)

²³ UN, 'Frequently Asked Questions Declaration on the Rights of Indigenous Peoples' (*un.org*, 2007) <<http://www.un.org/esa/socdev/unpfi/documents/FAQsindigenousdeclaration.pdf>> accessed 23 October 2017

²⁴ UNGA, 'Plan of Action for the third phase (2015–2019) of the World Programme for Human Rights Education Report of the Office of the United Nations High Commissioner for Human Rights' (4 August 2014) (A/HRC/27/28)

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ A Roulstone, 'The Legal Road to Rights? Disabling Premises, Obiter Dicta and the Disability Discrimination Act 1995' [2003] 18(2) *Disability* 219

²⁸ *Ibid.*

creating change.²⁹ However, this thesis argues that disability legislation cannot be an entirely top down process, due to the direct involvement by members of the Disabled People's Movement (DPM) in the fight for the DDA.³⁰ Rather than removing people with disabilities from the legislative process, this thesis argues for empowerment and ownership through education requires critique of the role of the DPM and the law. Whilst Corker acknowledges the need to challenge 'collectivity within the movement' which prevents and blinkers change,³¹ her insistence that 'it is for the government and the legal profession to reconstruct the law, but it seems essential that such a reconstruction be effected through a dialogue with disabled people, through a public conversation with difference, through sameness—a conversation that is neither objectivist nor subjectivist,'³² still separates people with disabilities from the source and genesis of the power that she recognises as either emancipatory or oppressive, depending on how it is handled.³³ Being invited to join a conversation is a promise with little practical effect, presenting the illusion of representation, which is perhaps more dangerous than no representation.³⁴ The October 2017 Convention on the Rights of Persons with Disabilities Committee Report³⁵ highlighted low levels of awareness of the rights of people with disabilities amongst judiciary and law enforcement members in the UK, and expressed concern about the low levels of

²⁹ M Corker, The UK Disability Discrimination Act disabling language, justifying inequitable participation. in L Francis and A Silvers (eds), *Americans with Disabilities: Exploring Implications of the Law for Individuals and Institutions* (Routledge 2000) 364-365 and M Corker, *Deaf and Disabled or Deafness Disabled?* (Open University Press 1997) 115-118

³⁰ Scope, 'The Disability Discrimination Act 1995: The campaign for civil rights' <<https://www.youtube.com/watch?v=dwP1xuZZFuY>> accessed 12th Jan 2018, Scope, 'The Disability Discrimination Act: Love on the front line' <<https://www.youtube.com/watch?v=jyVjeh5pKTK>> accessed 12th January 2018 and Scope, 'The Disability Discrimination Act: Standing on the shoulders of giants' <<https://www.youtube.com/watch?v=PW009FHb5bc>> accessed 12th January 2018.

³¹ Corker n. 29. 366-367

³² *Ibid.* 366

³³ *Ibid.*

³⁴ O Lobel, 'The Paradox of Extra legal Activism: Critical legal consciousness and transformative politics' [2007] 120 (4) Harvard Law Review 947

³⁵ United Nations, 'Committee on the Rights of Persons with Disabilities' [2017] CRPD/C/GBR/CO/1 Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland 32(a)

redress used in judicial judgements of cases concerning discrimination against people with disabilities.³⁶

A 2010 Leonard Cheshire report³⁷ showed that only ‘42% of the 1,095 people interviewed as part of a Ipsos MORI research project and of 15 in depth interviews, felt they knew enough about the law to challenge unfair treatment’³⁸ and that 71% of those interviewed ‘had either never heard of the Disability Discrimination Act, or knew little or nothing about it.’³⁹ Whilst this is a small sample from a number of years ago, these factors do not lessen its meaning. It has been difficult to find up-to-date statistics or any further statistics around this issue using the search terms ‘disabled peoples’ awareness of disability rights law’ indicating that this issue is underexplored.⁴⁰ Available links focused on retroactive measures. For example, the reference in gov.uk to the rights of people with disabilities signposts those who felt their rights had been violated to Disabled Peoples Organisations and Citizens Advice Bureau, rather than focusing on rights education for people with disabilities.⁴¹ The Office for Disability Issues (ODI) focused more on resources for persons without disabilities who were looking to know more about inclusion, such as information for ‘disability confident employers’ ‘built environment professional education project progress report’, ‘A guide to Inclusive Communication’ ‘the announcement of new appointments to the department.’⁴² Areas of the site which were labelled Disability rights⁴³ and Equality

³⁶ *Ibid.* B (14)

³⁷ Leonard Cheshire, 'Rights and reality Disabled people's experiences of accessing goods and services Executive Summary' <<https://www.leonardcheshire.org/sites/default/files/Rights%20and%20reality%20-%20executive%20summary.pdf>> (accessed 22 May 2017).

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ The Office for Disability Issues were approached for Freedom of Information Request. The response received was that no such statistics were held (15 June 2017.)

⁴¹ Government, 'Disability Rights' <<https://www.gov.uk/rights-disabled-person/further-help-and-advice>> (accessed 22 May 2017).

⁴² Office for Disability Issues, 'Office for Disability Issues' <<https://www.gov.uk/government/organisations/office-for-disability-issues>> (accessed 22 May 2017).

⁴³ Government, 'Disability Rights' <<https://www.gov.uk/browse/disabilities/rights>> (accessed 22 May 2017).

Rights Guidance⁴⁴ gave little focus on educating people with disabilities about their rights before violation occurred but were preoccupied with rectifying the situation once a violation had already occurred.⁴⁵

Evidence from A House of Lords Select Committee on the Equality Act 2010 and Disability⁴⁶ demonstrates a lack of awareness about Disability rights by people with disabilities and other members of society continues.⁴⁷ The cost of court cases⁴⁸ and understanding mechanisms⁴⁹ was a common barrier to accessing rights in practice.⁵⁰ This is heightened by the lack of awareness of the Equality Act 2010 (EQA 2010) and disability rights within the Judiciary any knowledge is reliant on their earlier practice.⁵¹ Incorporating disability perspectives into undergraduate liberal legal education would help to overcome this. One respondent argued that the content of the EQA is fine and enforcement is the problem.⁵² This uncritical acceptance of legislation is legal reification.⁵³ The written evidence highlighted the lack of coordination between domestic legislation and the United Nations Convention on the Rights of People with

⁴⁴ Government, 'Equality Act 2010: guidance' <<https://www.gov.uk/guidance/equality-act-2010-guidance>> (accessed 22 May 2017).

⁴⁵ Government, 'Discrimination: your rights' <<https://www.gov.uk/discrimination-your-rights>> (accessed 22 May 2017).

⁴⁶ Select Committee on the Equality Act 2010 and Disability Oral and Written Evidence HL (24 March 2016).

⁴⁷ *Ibid.* See for example D Johnson (Law Centres Network) 158, R CrasnowQC (Bar Council) 160 and 164, Breakthrough Britain 199 para. 5.1, A Brenton203-204, Challenging Behaviour Foundation, 293 paras. 38-39, N Crowther and N O'Brien315, Department for Transport, 371 and 375, Disability Charities Consortium, 406, Disability Rights UK and RNIBP, 448-449, Discrimination Law Association, 478, para. 32, 484 para. 67 and 490, Down's Syndrome Association 496 Q3 and 500 Q11, J Fogerty and D Paulley 628-629, Law Center Network 806 para. 17, The Mental Health Foundation 906 para. 3.9, National Deaf Children Society 970 Q2 para 2.1 and 971 paras. 3.1 and 3.2, People First (Self Advocacy) 1042 Q3 and 1046, Pembrokeshire People First 1057, Plumstead Community Law Centre 1060, Royal Mencap Society 1101, Sheffield Citizens Advice and Law Centre 1171 para. 5.1, Thomas Pockington Trust 1185 para. 4, Thurrock Coalition 1186, Transport for All 1206, Unity Law 1227 para. 2 and Louise Whitfield 1247 para. (c).

⁴⁸ *Ibid.* See Action on Hearing Loss p. 50-51 para. 10, Arfon Access Group p. 66 Q3 para. (b), Aspire p. 74 para. 10.3, The Bar Council p. 145-148 paras. 28-42, Bar Council, Discrimination Law Association, Law Centres Network and Law Society p. 157-160.

⁴⁹ *Ibid.* See Jeanine Blamires p. 177-181, David and Jeanine Blamires, Andrew and Michele Brenton and Carers UK p. 183-184.

⁵⁰ Flynn, E, *Disabled justice?* (Ashgate, Farnham 2015) 16, 17, 19 and 50.

⁵¹ Select Committee on the Equality Act 2010 and Disability Oral and Written Evidence HL (24 March 2016) *Ibid.* R Crasnow 169.

⁵² *Ibid.* D Johnson, 170.

⁵³ See Theory Chapter from p.73

disabilities (CRPD).⁵⁴ The Equality and Human Rights Commission responded to the recommendation to raise awareness of the rights of people with disabilities through education by launching a £100,000 project to report on the need for, and how to achieve, wider education.⁵⁵ Disappointingly, the focus on Disabled People's Organisations (DPOs),⁵⁶ rather than wider society made disability appear a niche area only important to those already involved. This highlights the importance of mainstreaming discussions about law and disability to prevent bureaucracy forming barriers for those without specialised knowledge.⁵⁷

The Baring Foundation explored the use of law by people with disabilities through UK Non-Governmental Organisations (NGOs).⁵⁸ The report highlighted the potential barriers to voluntary sector organisations using legal methods to achieve their aims,⁵⁹ such as lack of legal knowledge, lack of legal basis for claims, financial resource pressures, access to legal resources, access to justice, organisational culture, potential loss of high profile cases, division of labour and fear of jeopardising existing relationships.⁶⁰ Whilst this thesis supports many of the arguments in the Report, it identifies several weaknesses. Firstly, emphasis on employment. Secondly, it fails to set out a defined and systematic approach of how to do so. Thirdly, framing the discussions around NGOs continues the idea disability does not concern other organisations.

⁵⁴ *Ibid.* 162-164.

⁵⁵ EHRC, 'Equality and Human Rights Commission's response to the report of the House of Lords Select Committee on the Equality Act 2010 and Disability: the impact on disabled people' <<https://www.parliament.uk/documents/lords-committees/equality-act/EHRC-reponse-to-Equality-Act-Report.pdf>> (accessed 10 March 2017).

⁵⁶ *Ibid.*

⁵⁷ See V Finkelstein, *Emancipating Disability Studies*. In T Shakespeare (ed), *The Disability Reader Social Sciences Perspectives* (Continuum 1998)

⁵⁸ Dr L Vanhala, 'The Baring Foundation: Working Paper No 2 on Better Use of the Law by the Voluntary Sector: Framework for Better Use of the Law by the Voluntary Sector' (August 2016) <<http://baringfoundation.org.uk/wp-content/uploads/2016/07/Framework-for-better-use-of-law-WPaper2-1.pdf>> (Accessed 16 June 2017), 2.

⁵⁹ *Ibid.* 10-11

⁶⁰ *Ibid.*

Scope and Limitations

This thesis responds to these weaknesses by presenting a prototype of how undergraduate liberal legal education might incorporate disability discourse into the curriculum, to address the gap between the goals of the human rights framework relating to disability (education and awareness raising)⁶¹ and the reality, of the low levels of legal consciousness, in practice. Recommendations made, understand that the legal curriculum is finite, in terms of content and teaching time and the predominance of doctrinal skills.⁶² In terms of Disability Law, traditional resources, such as textbooks, are relatively underdeveloped,⁶³ especially for independent use by those with neophyte knowledge. This may make widespread course development and implementation difficult in practice. However, London School of Economics' (LSE) Property Law Module⁶⁴ introduces 'students to the role of property concepts in legal and social thought'⁶⁵ rather than pure doctrinal analysis, demonstrating the possibility for courses to evolve to include aspects of the law relating to disability in the future, if arguments can be made for its inclusion. This project was initially envisioned as an empirical project involving interviews with students at a number of English law schools.⁶⁶

The analysis of legislation and supplementary documents will focus specifically on provisions relating to education as a recognition of disability rights, and articles concerning recognition of dignity and status of people with disabilities as rights holders and community members. It will not engage with literature relating to the justification of human rights and human rights based legislation, outside of what can be inferred

⁶¹ See Substantive chapters

⁶² F Cownie, 'Alternative Values in Legal Education' [2003] 6(2) *Legal Ethics* 160-164, 174 and A Bradney, 'Law as a Parasitic Discipline' [1998] 25(1) *Journal of Law and Society* 71-72

⁶³ There is a lack of 'a book used as a standard work for the study of disability and law, which is the dictionary definition of a textbook. OED 2010

⁶⁴ LSE, 'LL105 Half Unit Property

I' (*lse.ac.uk*, 2017) <http://www.lse.ac.uk/resources/calendar/courseGuides/LL/2017_LL105.htm> accessed 29 January 2018

⁶⁵ *Ibid.*

⁶⁶ See Appendix

by its development and application in relation to disability. It is felt that the genesis of the human rights approach to disability from grass roots movements⁶⁷ and the development and ratification of the first human rights convention on disability by the UN⁶⁸, is justification enough for their utility and social value. However, the thesis will acknowledge the presence of value based arguments for human rights and the need to handle these with care in critical pedagogy. This thesis is aware that people with disabilities are not the only group of people excluded from the liberal legal curriculum, and does not argue that their inclusion should be prioritised over that of other groups, it will not engage with literature concerning the inclusion of other groups.⁶⁹ It will argue that suggestions might assist other groups. It recognises the importance of acknowledging the multifarious aspects of the experiences of people with disabilities and that any approaches to including disability within the curriculum, acknowledge multiple discrimination and intersectionality.⁷⁰

Legal education is defined as liberal education in line with The Quality Assurance Agency for Higher Education 'Benchmark'⁷¹ document, as opposed to a vocational education, in light of the disparity between the numbers applying to read law and those going in to practice.⁷² However, the nature of the previous studies in this area, which

⁶⁷ See Literature Review, Disability

⁶⁸ United Nations, 'Secretary-General Hails Adoption of Landmark Convention on Rights of People with Disabilities' (*Unorg*, 13 December

2006) <<https://www.un.org/press/en/2006/sgsm10797.doc.htm>> accessed 23 August 2018

⁶⁹ See for example: K Brooks and D Parks, 'Queering Legal Education: A Project of Theoretical Discovery' [2004] 27(89) *Harvard Womens Law Journal*, K Crenshaw, 'Forward: Toward a Race-Conscious Pedagogy in Legal Education' [1988-1990] 1(11) *Nat'l Black LJ*, LE Teitelbaum and others, 'Gender, Legal Education and Legal Careers' [1991] 41(443) *Journal of Legal Education*, N Dowd and others, 'Diversity Matters: Race, Gender, and Ethnicity in Legal Education' [2003] 15(1) *University of Florida Journal of Law and Public Policy*, A Francis, and I McDonald, (2009) *After dark and out in the cold: Part-time law students and the myth of equivalency*. *Journal of Law and Society*, 36 (2). 220-247, D Reay and others, 'Fitting in' or 'standing out': Working-class students in UK higher education' [2010] 36(1) *British Education Research Journal*

⁷⁰ K Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics and Violence against Women of Colour' [1991] 43(0) *Stanford Law Review* 1242-1244 and D Schiek, 'Intersectionality and the Notion of Disability in EU Discrimination Law' [2016] 53(1) *Common Market Law Review* 62.

⁷¹ The Quality Assurance Agency for Higher Education, 'UK Quality Code for Higher Education Part A: Setting and maintaining academic standards' [2015] Subject Benchmark Statement UK Quality Code for Higher Education Part A: Setting and maintaining academic standards Law 4

⁷² "In 2016-17, 25,155 UK students applied to study law at undergraduate level in England and Wales, out of whom 17,855 UK students were accepted on to courses [...] In the year ending 31 July 2016, 5,728 new traineeships were registered with the SRA." The Law Society, 'Entry

are predominantly American and all focused on vocational approaches to law, means that some brief discussion will be necessary in the literature review.⁷³ Analysis is limited to England and English legislation only, due to both time and word constraints, and lack of familiarity with other legal systems.

This project was undertaken during a shift in legal education, including the introduction of the Solicitors Qualifying Examination,⁷⁴ the Higher Education and Research Act,⁷⁵ changes to Disabled Students Allowance (DSA) and access funding,⁷⁶ and the ramifications of the 2016 Referendum on membership of European Union and resulting uncertainty around the status of EU law.⁷⁷ This uncertainty and change highlights the need for greater understanding of the relationship between law and disability rights. The propositions made in this thesis are aware of these developments and their potential impact. There is an understanding that the progress made in these areas made after the completion of the thesis may render some of these conclusions and recommendations invalid or in need of revision, leaving avenues for future work.

Research Questions:

The thesis is framed by the following research questions:

1. What is the relationship between the human rights of people with disabilities, the law and legislative practice and society?
2. How is this relationship constructed and monitored?
3. Why is the relationship important?

trends' (*lawsociety.org.uk*, 2017) <<https://www.lawsociety.org.uk/Law-careers/Becoming-a-solicitor/Entry-trends/>> accessed 16 October 2017

⁷³

Chapter 1: Literature Review

⁷⁴ SRA, 'A new route to qualification: the Solicitors Qualifying Examination' (*sra.org.uk*, 25 April 2017) <<https://www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page>> accessed 20 November 2017

⁷⁵ Solutions chapter

⁷⁶ UK Chapter

⁷⁷ EU Chapter

4. What potential role could undergraduate liberal legal education play in developing this relationship?
5. How would this work in practice?

Outline:

Chapter 1: Literature review

This chapter explores existing literature in the field around Disability, legal education, citizenship and considers strengths, weaknesses and gaps that the thesis will address and build on.

Chapter 2: Theoretical framework

This chapter will introduce the critical perspective of the thesis. It will use Critical Pedagogy, Critical Legal Studies, Critical Disability Theory and will introduce the concept of 'Proactive Critical Citizenship,' and reintroduce Assurance of Rightful Access and explain the methodology Critical Discourse Analysis.

Chapter 3: The supranational framework and the CRPD

This chapter analyses the supranational legislative framework concerning disability to demonstrate the centrality of education to advancing and protecting the rights of people with disabilities, contextualising the relationship between 'Proactive Critical Citizenship' and a rights-based approach to disability. It will consider the potential and limitations of the framework and the potential of Proactive Critical Citizenship and Assurance of Rightful Access around disability to strengthen it. It will consider how discussion of these aspects could be integrated into the undergraduate liberal legal curriculum.

Chapter 4: UK domestic framework

This chapter analyses the domestic framework concerning the rights of people with disabilities and the role of education and highlights issues and weakness which could present barriers to access to education, and how undergraduate legal education might advance disability rights generally.

Chapter 5: The EU framework around disability and education from 1973 up to January 2017

This chapter explores the potential implications of 'Brexit' on rights protection of people with disabilities, arguing that 'Brexit' presents a key example of the importance of legal education in raising legal consciousness to ensure that people are aware of the rights they want to protect in times of change.

Chapter 6: Solutions

This chapter will make practical suggestions about the development of Proactive Critical Citizenship through teaching praxis and accessible curriculum design and how Assurance of Rightful Access could assist with this.

Chapter 7: Conclusion

This chapter synthesises overarching themes and arguments explored throughout and outlines avenues for future work which seeks to test the arguments in the thesis in practice.

Chapter 1: Literature Review

Whilst there are significant bodies of literature concerning Disability, Law, Human Rights, Legal Education and Citizenship, there has been no synthesis or consideration of the relationships between these concepts. Recent legal and social developments concerning the human rights of people with disabilities, necessitate an understanding of these interrelationships. Education plays a central role in changing established attitudes and raising awareness about the rights of people with disabilities and the legal protection that these rights now have. Though the empowering potential of education is recognised at all levels of the human rights framework, the practical impact is underexplored. This was recognised at the supranational level by the inclusion of a specific article within the United Nations Convention on the Rights of People with Disabilities (CRPD).¹ However, the impact of this at the domestic level is questionable based on The reports highlighted in the Introduction indicate that awareness of the rights of people with disabilities remains low.² Legal education presents an opportunity to focus on increasing awareness and critique of the current approach to the human rights of people with disabilities by providing a space to link social responses with the system that regulates and creates them. This could strengthen understanding and join the aspects of defence and prevention of future rights violation. It offers an opportunity to make legal education representative of the future of society as Merryman hoped.³ This review will explore the development of disability and societal responses and understanding of it at various times, from fear and control to the development of citizenship and human rights and the development of a legal regulatory

¹ The Convention on the Rights of Persons with Disabilities

² See Select Committee on the Equality Act 2010 and Disability Oral and Written Evidence HL (24 March 2016) and Leonard Cheshire, 'Rights and reality Disabled people's experiences of accessing goods and services Executive Summary' <<https://www.leonardcheshire.org/sites/default/files/Rights%20and%20reality%20-%20executive%20summary.pdf>> (accessed 22 May 2017).

³ J H Merryman, 'Legal Education There and Here: A Comparison' [1975] 27 Stanford Law Review 859

and protective framework. It is presented in broad themes of Disability, Law and Rights. Within these the subthemes of legal consciousness, legal education and dignity, autonomy and participation will demonstrate the links between them and the potential of creating Proactive Critical Citizenship through legal education to develop and protect these relationships.

Disability

The Development of Disability

In early societies marks of Disability signified immorality and danger.⁴ Morality predicated citizenship entitlement and so it was often denied to people with disabilities.⁵ Quarmby argues that mirror attitudes exist today. People who “battle” cancer or ‘lose the fight’ against multiple sclerosis.⁶ ‘Brave’ amputee children [who] are celebrated for their achievements [...] and ‘plucky’ servicemen and women.⁷ Societal responses to disability also developed moralistic overtones as time progressed from a sense of fear and suspicion to charity and pity⁸ and latterly in the Telethons of the 80’s and 90’s⁹ and charity Tea Parties of the 50’s and 60’s¹⁰ which are now criticised by Morris and Campbell.¹¹ Contemporarily, the Disability Action Alliance website utilises outdated charity based resources from Comic Relief in its section ‘Awareness raising for Children,’¹² predating the DDA,¹³ including videos from the 1994 Comic Relief

⁴ K Quarmby, *Scapegoat: Why we are failing Disabled People* (Portobello Books 2013) 18-20

⁵ *Ibid.* 20

⁶ *Ibid.* 31

⁷ *Ibid.*

⁸ See for example M S Holmes, *Fictions of Affliction* (University of Michigan Press 2009) 5

⁹ J Morris, *Pride Against Prejudice: Transforming Attitudes to Disability* (The Women's Press 1991) 73

¹⁰ British Pathé, 'Lady Hoare's Thalidomide Children's Party (1963)' (*youtube.com*, 1963 (uploaded 13 April 2014)) <<https://www.youtube.com/watch?v=xZyGHebG0IA>> accessed 22 May 2017

¹¹ J Campbell, 'Developing our Image - Who's in control?' (*Disability Studies Leeds*, paper presented at the “Cap-in-Hand” conference, February 1990) <<http://disability-studies.leeds.ac.uk/files/library/Campbell-DEVELOPING-OUR-IMAGE.pdf>> accessed 12 January 2016.

¹² Disability Action Alliance, 'Disability Awareness for Children' (*disabilityactionalliance.org*, 29 March 2016) <<http://disabilityactionalliance.org.uk/resources/disability-awareness-for-children/>> accessed 22 May 2017

¹³ See for example M Mason and R Rieser, 'Altogether Better (from 'Special Needs' to Equality in Education)' (*Worldofinclusion.com*, 1994) <<http://www.worldofinclusion.com/res/altogether/Altogether Better.pdf>> accessed 26 March 2018

‘Altogether Better’ campaign designed to promote inclusion of people with disabilities in schools.¹⁴ This charitable genesis is problematic from a rights perspective because it exemplifies the rich benevolent white male giving out charity on behalf of society’s ‘unfortunates,’¹⁵ and undermines the empowerment of people with disabilities despite the fact that previous Comic Relief campaigns focused on rights not charity. Singles such as ‘Helping Hand’¹⁶ reemphasises the relationship between disability, handouts and charity. This demonstrates that the link between morality, disability and charity and its potential to undermine the empowerment of people with disabilities still exists. Consequently, this project is critical of any unexplained or unsupported claims to morality in relation to the rights of people with disabilities, legal or educative practices because the tension between the theories of moral universalism and moral relativism¹⁷ highlight the lack of a shared concept of morality across society. Dworkin¹⁸ argues that moral autonomy is not truly autonomous. All people are governed by the same constraints regardless of situation when it comes to their understanding of morality. Therefore, relying on morality to achieve rights is precarious.

Medical responses to disability crystallised from the First World War presenting disability as a personal tragedy or defect to be remedied by medicine.¹⁹ From the 1920’s in Britain, people with disabilities formed protest groups to demonstrate their worth as citizens and to have their rights acknowledged.²⁰ In the 1960’s, the Independent

¹⁴ Comic Relief, 'Our history timeline' <https://www.comicrelief.com/who-we-are/history/timeline?date_filter%5Bvalue%5D%5Byear%5D=1994> accessed 22 May 2017

¹⁵ *Ibid.*

¹⁶ Comic Relief, 'Helping Hand' (*youtube.com*, 1995 (Uploaded Aug 2008)) <https://www.youtube.com/watch?v=ozTBcB_qwag> accessed 22 May 2017

¹⁷ See for example D Browning, *Universalism vs Relativism: Making Moral Judgements in a Changing, Pluralistic, and Threatening World* (Rowman & Littlefield Publishers Inc 2006), R Rorty, *Contingency, irony and solidarity* (Cambridge University Press 1989) and PK Moser and TL Carson, *Moral Relativism A Reader* (Oxford University Press 2001)

¹⁸ G Dworkin, *The Theory and Practice of Autonomy* (1st, Cambridge University Press, Cambridge 1988) 34-39

¹⁹ H.J. Stiker, *A History of Disability* (University of Michigan 1999), 124

²⁰ See for example the Greater Manchester Coalition of Disabled People, 'A Brief History Of Disabled People's Self-Organisation' (*contenthistoricensland.org.uk*, November 2010) <<https://content.historicensland.org.uk/content/docs/research/brief-history-disabled-peoples-self-organisation.pdf>> accessed 8 August 2017 6

Living Movement and organisations such as The Union of Physically Impaired Against Segregation (UPIAS)²¹ continued this challenge. This moved the focus from the personal to the public by exploring the impact of design, architecture and attitudes on the rights of people with disabilities.²² This grounded the academic concept of 'the social model' by Mike Oliver.²³ User led groups often failed to include a variety of voices due to restrictive hierarchy and a desire to limit the potential of a divide and conquer campaign by authority figures slowing down change.²⁴ Consequently, the thesis argues that sole reliance on the collective voice as a means of communicating dissatisfaction or ways of thinking about disability is problematic. Those without disabilities or those not sufficiently confident to engage on the political stage can produce ideas in other arenas such as the academy. Though responsibility for disability and seeking changes does not rest entirely with the individual. Shakespeare argues that a total division between the medical and social models has the potential to oppress by failing to acknowledge individual feelings about a persons lived experience with disability,²⁵ or the tendency of disability academics to inhibit debate which deviates from the social model.²⁶ He argues for an Interactionist approach to lessen division which could slow down change, recognising that change is likely to come quicker by seeing commonality over difference.²⁷ Shakespeare and Watson²⁸ and others²⁹ criticise the social model's failure to account for the impact of impairment and the potential for people with disabilities to choose to access medical interventions to overcome

²¹ T Shakespeare, *Disability Rights and Wrongs* (1st, Routledge, Oxon 2006). 12-13

²² J Hunt, 'A revolutionary group with a revolutionary message' (*disability.co.uk/*, 2001) <<http://pf7d7vi404s1dxh27mla5569.wpengengine.netdna-cdn.com/files/library/Hunt-J-a-revolutionary-group-with-a-revolutionary-message.pdf>> accessed 8 August 2017

²³ M Oliver, *The Politics of Disablement* (Basingstoke: Palgrave Macmillan, 1990) 22 and C Barnes and M Oliver, *The New Politics of Disablement* (2nd ed, Palgrave Macmillan 2012) 11-14

²⁴ Shakespeare n. 21.13

²⁵ *Ibid.* 12-13

²⁶ C Thomas, 'How is disability understood? An examination of sociological approaches' [2004] 19(6) *Disability & Society* 581-582

²⁷ Shakespeare n. 21. 55-62

²⁸ T Shakespeare and N Watson, 'The social model of disability: an outdated ideology?' [2002] 2(0) *Research in Social Science and Disability* 13

²⁹ M Corker and S French, *Reclaiming Discourse in Disability Studies*. in S French and M Corker (eds), *Disability discourse* (Open University Press 1999) 6

these issues if they choose.³⁰ Gradually, disability was formally recognised as a human rights issue. Degener³¹ highlights several propositions. Firstly, that disability is a social construct but that human rights are not reliant upon a certain health or body status, removing possibility that the type or severity of impairment may hinder or negate human rights capacity as happened previously.³² Secondly, human rights extend beyond anti-discrimination measures into social, political and educational participation.³³ Thirdly, impairment is recognised as a human variation acknowledging the experiences of individuals with disabilities, bridging the gap between interactionist and other conceptions of disability.³⁴ Fourthly, recognising the multifaceted identities of people with disabilities and that discrimination can occur on grounds other than disability,³⁵ which is important to recognise within the education context.

Citizenship

The concept of citizenship begins to take prominence within considerations about society's responses to disability and ensuring that the rights of people with disabilities are promoted and protected within it.

Civic republican citizenship places emphasis on the role of duties.³⁶ Liberal citizenship places greater emphasis on the rights of individuals within citizenries.³⁷ Liberal citizenship involves a loose relationship between the state and the individual which is expressed by several positive civic rights which are honoured by the state, which

³⁰ *Ibid.* 12-3

³¹ T Degener, 'Disability in a Human Rights Context' [2016] 5(3) *Laws*

³² *Ibid.* 3-4

³³ *Ibid.* 4-6

³⁴ *Ibid.* 6-8

³⁵ *Ibid.* 9-11

³⁶ D Heater, *What is Citizenship?* (Polity 1999) 4

³⁷ *Ibid.*

respects individual boundaries. This concept of citizenship was born out of revolutionary developments in Europe and America which saw a move from monarch-subject relationships.³⁸ In the liberal citizenry duties are focused on the payment of taxes to the state³⁹ in return for the protection of rights, a weak sense of identity and the development of a comfortable private life and the accrual of wealth which Heater argues renders liberal citizenship as a political expression of capitalism.⁴⁰ For people with disabilities, this emphasis on economic productivity and reciprocity as conditions for citizenship may be problematic if the societal barriers to them becoming economically active are not recognised and removed. Social liberals believe that the existence of a welfare state is necessary to enable all citizens to achieve the basic economic conditions necessary to enjoy their citizenship rights. However, neo-liberals reject this as a system of creating dependency on the state which removes the individual's autonomy.⁴¹ Some neo-liberals take a moralistic stance that the enjoyment of rights without the attendant duty to contribute by paying taxes makes it immoral for certain citizens to accept the benefits of rights paid for by others.⁴² The liberal conception of citizenship can be said to be problematic for people with disabilities. Civic citizenship presents problems for people with disabilities, without recognition and protection of their rights people with disabilities cannot form the bonds with members of the community or participate in the building of the community and have their dignity and virtue recognised.⁴³ Therefore, it is necessary to reconceptualise citizenship in relation to disability that avoids the weaknesses of these traditional models.

³⁸ *Ibid.*

³⁹ *Ibid.* 6

⁴⁰ *Ibid.* 7

⁴¹ *Ibid.* 25

⁴² *Ibid.* 26-27

⁴³ *Ibid.* 45-50

Lister argues that: ‘it is time to [...] restate the case for effective citizenship rights for all regardless of [...] disability [...] status.’⁴⁴ This thesis takes a Marshallian perspective on citizenship as the formalisation of social entitlement as expressed through the development of systems of justice such as courts and government⁴⁵ to regulate which members of society could access justice through certain channels.⁴⁶ It also follows Marshall’s recognition that these institutions had similar but negative powers to remove rather than grant rights through the development and application of the Poor Laws from the Elizabethan period onwards.⁴⁷ Marshall’s recognition of the importance of education to enabling citizens to grow within societies and to acquire the requisite skills necessary to engage with these institutions is a key element of the concept of Proactive Critical Citizenship advanced in this thesis.⁴⁸ It is applied to the rights of people with disabilities in terms of both to access legal education but also the potential role of liberal legal education to advance the rights of people with disabilities in society generally. Delanty, strengthens this link by highlighting the role of the university in legal education to ensure that citizenry were educated to be able to develop further.⁴⁹ Delanty highlights the university’s role to ‘cultivate critical and reflective values in the population.’⁵⁰ He also focuses on the university’s role in ‘incorporating increasing numbers of people within society,’⁵¹ concerning raising awareness of the rights of people with disabilities through liberal legal education, this thesis argues that the university can still fulfil this function. Marshall argues that elementary education plays a role in raising awareness of human rights within society.⁵² Although this thesis deals

⁴⁴ R Lister, *Exclusive Society: Citizenship and the Poor* (CPAG 1991) 2

⁴⁵ TH Marshall, Citizenship and Social Class. in T Bottomore (ed), *Citizenship and Social Class* (Pluto Press 1992) 11

⁴⁶ *Ibid.* 8-9

⁴⁷ *Ibid.* 11-16

⁴⁸ *Ibid.* 16-17

⁴⁹ G Delanty, *Challenging Knowledge: The University in the Knowledge Society* (1st edn, Open University Press 2001) 49

⁵⁰ *Ibid.* 50

⁵¹ *Ibid.*

⁵² TH Marshall n. 45. 16

with awareness of disability rights at the undergraduate level, Marshall's arguments can be applied because knowledge and regulation of the human rights of people with disabilities⁵³ is still in its infancy and presents challenges in terms of implementation and awareness raising as demonstrated by the 2017 CRPD Committee Report concerns and the Leonard Cheshire and House of Lords reports on rights awareness.⁵⁴ A similar argument can be applied to criticism of Marshall's development of citizenship as a phased rather than continuous approach because as this thesis hopes to show, the development of citizenship rights of people with disabilities and the attendant legal protections has occurred in such a stratified way.⁵⁵ However, this thesis avoids engaging with political arguments from a party-political perspective. Rather, it considers the relationships between law, education, disability and where applicable economics within society in order to build and strengthen an argument for the potential value of increased legal understanding of the role of rights in terms of citizenship for people with disabilities and critique of content and implementation. Moreover, discussions of critical literacy and critical pedagogy in the theory chapter of the thesis are separated from '[...] functional or cultural literacy, [...]the technical process of acquiring basic reading skills necessary to follow instructions, read signs, fill in forms etc.'⁵⁶ Freire also distinguishes between the physical act of voting and the

⁵³ UN Treaty Collection, 'Convention on the Rights of People with disabilities' (*treaties.un.org*, 6 March 2018) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en> accessed 6 March 2018

⁵⁴ Select Committee on the Equality Act 2010 and Disability Oral and Written Evidence HL (24 March 2016), Leonard Cheshire, 'Rights and reality Disabled people's experiences of accessing goods and services Executive Summary' <<https://www.leonardcheshire.org/sites/default/files/Rights%20and%20reality%20-%20executive%20summary.pdf>> (accessed 22 May 2017), United Nations, 'Committee on the Rights of Persons with disabilities' [2017] CRPD/C/GBR/CO/1 Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland 32(a) and Dr L Vanhala, 'The Baring Foundation: Working Paper No 2 on Better Use of the Law by the Voluntary Sector: Framework for Better Use of the Law by the Voluntary Sector' (August 2016) <<http://baringfoundation.org.uk/wp-content/uploads/2016/07/Framework-for-better-use-of-law-WPaper2-1.pdf>> (Accessed 16 June 2017)

⁵⁵ A M Rees, T H Marshall and the progress of citizenship. in M Bulmer and A M Rees (eds), *Citizenship Today: The Contemporary Relevance of TH Marshall* (UCL Press 1996) 8-13

⁵⁶ P Mayo, 'Critical Literacy and Emancipatory Politics: The Work of Paulo Freire' [1995] 15(4) *International Journal of Educational Development* <<file:///ufs.iss.keele.ac.uk/homes/My%20Documents/1-s2.0-073805939500021T-main.pdf>> accessed 18 June 2018

ability to engage with critical evaluation of the systems of control which are regulated by such processes.⁵⁷ Whilst discussion of access to physical processes for people with disabilities and how these are supported or hindered by the legal framework and the need for students to critique this will be necessary in some instances,⁵⁸ the majority of discussion of politics or the political relates to critical rather than functional discussions of political parties and systems.

The reason for this is that there is insufficient time, space and knowledge in this thesis to engage with political theories on this level and this thesis takes a value-neutral approach due to the problematic position of morality in relation to disability rights and law over time which means that it cannot support the value-driven political view of citizenship advanced by Mouffe.⁵⁹ Marshall also aligns with the current thesis in that he proposes that 'Equality of status is more important than equality of income.'⁶⁰ This idea is explored in the thesis in relation to presenting the argument for a more inclusive perspective on the provision of access for people with disabilities rather than focusing solely on economic costs of providing it. However, unlike previous literature,⁶¹ this thesis will not consider this in relation to the provision of welfare and social services, but in terms of direct action through a reconceptualization of the concept of reasonable adjustment as 'Assurance of Rightful Access.'⁶² This thesis takes a similarly emblematic approach to equality as an entitlement, based on Raz's concept of

⁵⁷ P Freire, *The Politics of Education: Culture, Power and Liberation* (Macmillan 1985) 176

⁵⁸ See for example, Communication No. 4/2011 Zsolt Bujdosó and five others v. Hungary [2011] 10 C 1 (CRPD Committee) accessed 6th May 2014 and

⁵⁹ C Mouffe, 'Citizenship and Political Identity' [1992] 61(Summer) October 32

⁶⁰ TH Marshall, Citizenship and Social Class. in C Pierson and FG Castles (eds), *The Welfare State Reader* (Polity Press 2006) 38

⁶¹ M Oliver, *Understanding Disability From Theory to Practice* (Palgrave 1996) 53-94

⁶² A Pearson 'A Comparative Study of 'Reasonable Adjustment' and 'Undue Burden' Provisions for People with Disabilities Accessing Public Transport Services under European Union Law.' Keele University September 2014 A.V. Pearson, 'What's worth got to do with it? Language and the socio-legal advancement of disability rights and equality' (2014) 20(3) Web JCLI. A.V Pearson, 'The debate about wheelchair spaces on buses goes 'round and round': access to public transport for people with disabilities as a human right'. (Spring 2018) 69(1) NILQ

‘rhetorical equality,’⁶³ which does not require a philosophical exploration as to what justifies or classifies an inequality, but rather uses equality as a signifier of ‘equal respect and concern’⁶⁴ within our culture and the recognition of the humanism that one recognises in oneself in others. In terms of attempting to enable people with disabilities to access their societies and rights with legal protection and recognition, practical considerations of equality will be framed in terms of substantive equality. This thesis focuses on substantive rather than formal equality⁶⁵ arguing that people with disabilities should receive the necessary adjustments and funding required to remove barriers to their participation in society.⁶⁶

The current approach to citizenship of people with disabilities appears to model Rawls’ conception of social contract theory.⁶⁷ Rousseau introduced the concept of the social contract on the premise that there should be a free and equal relationship between members of civil society and the state,⁶⁸ but Rousseau’s society requires homogeneity and is intolerant to difference,⁶⁹ which would make it difficult to extend to issues around disability. Rawls argues that members of a society will act rationally or morally so as not to put their own advancement or claim on resources above the wellbeing of other members of society.⁷⁰ He acknowledges that people within societies are born in different positions with varying access to resources as a result and argues that people

⁶³ J Raz, *The Morality of Freedom* (Oxford University Press 1986) 227-233

⁶⁴ *Ibid.* 228

⁶⁵ Aristotle, 3 *Ethica Nicomachea*, 112-117, 1131a-1131b, Ackrill, J. L. and Urmson J. O. (eds.), W. Ross translation, Oxford University Press, 1980

⁶⁶ Equal Rights Trust, 'The Ideas of Equality and Non-Discrimination: Formal and Substantive Equality' (*Equalrightstrust.org*, 8 November 2007) <<http://www.equalrightstrust.org/ertdocumentbank//The%20Ideas%20of%20Equality%20and%20Non-discrimination%2C%20Formal%20and%20Substantive%20Equality.pdf>> accessed 6 March 2018

⁶⁷ J Rawls, *A Theory of Justice* (Revised edn, OUP 1999)

⁶⁸ See for example J J Rousseau, *The Social Contract* (Wordsworth Editions 1998) Book 1 Chapters 6 and 8

⁶⁹ D Matravers, Introduction. in JJ Rousseau, *The Social Contract* (Wordsworth Editions 1998) XV

⁷⁰ *Rawls* n. 67. 4, 13

will strive for the greater good of the community rather than themselves.⁷¹ However, there are some issues with Rawlsian justice. The starting position⁷² would be impossible to institute, and impossible to test. There are many examples whereby communities and societies place individual interests above the good of others.⁷³ Rawls' development of the social contract requires that all members of society can take part in the discussion about what constitutes justice and the roles of rights and responsibilities to ensure that it is well organised and functions effectively.⁷⁴ However, people with disabilities were excluded from these discussions as a result of regimes of institutionalisation and failure to recognise their rights. Several authors have recognised issues relating to Rawlsian social justice and disability.⁷⁵ These problems arise from the lack of unified definition of concepts such as dignity and the threshold to obtaining it. Kant argues⁷⁶ that people are autonomous if they can make their own decisions and act in ways not determined by others, it is this that attributes dignity. Rawls' approach to social contract and resource allocation can be seen in the continued focus on employment across the human rights framework and disability, as Rawls argues that the ability to participate in the production of resources creates the claim to a portion of those resources.⁷⁷ Moreover, Rawls classification of people with severe impairments as falling 'below the line'⁷⁸ of capability is demonstrative of the concept of reasonable adjustment and undue burden, because it suggests that society will assist to a point, but there will be those who fall below the line of what is reasonable and should not expect the right to more, which mirrors Rawls thinking with regard to

⁷¹ *Ibid.* 12

⁷² *Ibid.* 11

⁷³ Gov, 'Modern Slavery Act 2015' (*Gov.uk*, 14 March 2016) <<https://www.gov.uk/government/collections/modern-slavery-bill>> accessed 21 August 2017

⁷⁴ Rawls n.67. 4

⁷⁵ See for example, L Terzi, What metric of justice for disabled people? Capability and disability. in H Brighthouse and I Robeyns (eds), *Measuring Justice: Primary Goods and Capabilities* (CUP 2010) 161-169

⁷⁶ I Kant, *Groundwork for the Metaphysics of Morals*. in A.W. Wood (ed), *Groundwork for the Metaphysics of Morals* (Yale University Press 2002) 53-54

⁷⁷ J Rawls, *Justice As Fairness A Restatement* (Universal Law Publishing Company 2001) 48

⁷⁸ J Rawls, *Political Liberalism* (Columbia University Press 1993) 183

unjust enrichment.⁷⁹ Nussbaum critiques Rawls' failure to consider the needs of people with disabilities and their potential need for differential expenditure in his first conception of social contract theory, by requiring them to meet the threshold of independence.⁸⁰ However, she praises his acknowledgement of the possibility of utilising insurance in his restatement of the concept of social justice in response to criticism.⁸¹ Like Sen, Nussbaum argues that the capabilities approach has more to offer people with disabilities in terms of realising their rights because it focuses on ensuring that they are able to access their rights by making changes within society, such as providing accessible environments and education, as well as having access to funding.⁸² The thesis responds to this reasoning by extending the concept of Assurance of Rightful Access,⁸³ to the context of legal education.

At first sight reasonable adjustment appears to dispel notions of inequality in the human rights and to secure substantive equality within the framework in relation to disability:

Reasonable adjustment (or accommodation) duties require duty-bearers to recognise that individuals with certain characteristics (such as physical, sensory, intellectual or psychosocial impairment or a particular religious belief) might be placed at a disadvantage by the application of them of conventional requirements or systems.⁸⁴

However, Lawson's review of literature and responses to reasonable adjustment duties in the context of both the English and American framework highlights a tendency for

⁷⁹ *Ibid.* 130-132

⁸⁰ M Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Harvard University Press 2007) 109-114

⁸¹ *Ibid.* 123-127

⁸² *Ibid.* 167

⁸³ See Theory Chapter 'Assurance of Rightful Access'

⁸⁴ A Lawson, *Disability and Equality Law in Britain: The Role of Reasonable Adjustment* (Hart Publishing 2008) 1

employers and states to miscalculate the cost and scale of reasonable adjustment measures and the perceived inefficiency of workers with a disability compared to those without⁸⁵. She also recognises the view that reasonable adjustment can be viewed as an element of compromise.⁸⁶ Though she recognises this and considers the possibility for change based on the Dutch approach, she argues that any concerns around the notion of reasonableness in the context, would simply be transferred to the notion of undue burden.⁸⁷ She does concede that in order for the concepts to be effective in practice they should be utilised in tandem with practical schemes to ensure acceptance of its aims in practice.⁸⁸ Lawson also proposes that the relative familiarity with the concept of reasonable within the British legislative landscape is another reason not to replace it.⁸⁹ However, the present thesis will extend arguments from previous research by the author, to argue that there is a case to be made for the concept of familiarity breeding contempt and that the wholesale removal of the concepts of reasonable adjustment and undue burden and replacement with a new concept would remove, not only the possibility of shifting focus onto undue burden, but also removes the threshold elements and compromise of reasonable adjustment that Lawson recognises.⁹⁰ Weber argues that it is an 'able-bodied orientation' of the world which immediately sets limits and suggests acquiescence by the able-bodied norm to the needs of people with disabilities.⁹¹ Lawson argues that reasonable adjustment needs to be centralised in research.⁹²

This thesis recognises that reasonable adjustment had a transformative role in the recognition of rights of people with disabilities by enabling them to access their rights

⁸⁵ *Ibid.* 238

⁸⁶ *Ibid.* 279- 280

⁸⁷ *Ibid.* 280

⁸⁸ *Ibid.* 281

⁸⁹ *Ibid.* 280

⁹⁰ *Ibid.*

⁹¹ Weber, 'Beyond the Americans with Disabilities Act: A National Employment Policy for People with Disabilities' [1998] 46(1) Buffalo Law Review 148-149

⁹² Lawson n. 84. 4

in practice. Yet, an analysis of the human rights framework relating to disability at the current time, in the context of low levels of legal consciousness of disability rights amongst people with disabilities and the uncertainty around Brexit and evidence of human rights failures at the domestic level,⁹³ means that a reimagining of the concept could reveal how to best continue the transformative goal of the framework and to improve upon it in the future. This reimagining will encompass discussions about what the terms ‘reasonable’ and ‘undue burden’ reveal about the position of people with disabilities within the legal framework and society and argues that these concepts have as much potential to stall as well as drive change and that exploring this within the context of undergraduate liberal legal education has the potential to create proactive critical citizens who are able to critically evaluate the role of law in advancing or curtailing their human rights.

Beckett⁹⁴ argues that focusing on a sense of shared vulnerability and proactive engagement by people with disabilities within society maximises their citizenship.⁹⁵ She argues that education has a key role to play in this process although her focus is on elementary rather than higher education.⁹⁶ This thesis seeks to alter this focus. McCowan, Essomba⁹⁷ and Boland⁹⁸ identify the difficulties in integrating citizenship into higher education due to issues of policy translation by lecturers and creating ownership amongst students along with changes in mode of attendance and focus on employability as a result of higher education.⁹⁹ They highlighted difficulties with

⁹³ United Nations, 'Committee on the Rights of Persons with Disabilities' [2017] CRPD/C/GBR/CO/1 Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland.

⁹⁴ AE Beckett, *Citizenship and Vulnerability: Disability and Issues of Social and Political Engagement* (1st edn, Palgrave 2006)

⁹⁵ *Ibid.* 194-195

⁹⁶ *Ibid.*

⁹⁷ MA Essomba and others. 2008. *Developing the conditions for education for citizenship in higher education (CiCe guidelines on the design of higher education courses)*. London: Children's Identity & Citizenship in Europe 17-19 and T McCowan, 'Opening spaces for citizenship in higher education: three initiatives in English universities' [2012] 37(1) *Students in Higher Education*.

⁹⁸ J A Boland, 'Embedding a civic engagement dimension within the higher education curriculum: a study of policy, process and practice in Ireland.' (PhD, University of Edinburgh 2008)

⁹⁹ T McCowan, 'Opening spaces for citizenship in higher education: three initiatives in English universities' [2012] 37(1) *Students in Higher Education* 51

dedicated courses as they fail to reach students outside of political courses.¹⁰⁰ However, Boland's focus on service based learning is incompatible with the UK approach to the degree.¹⁰¹ Her arguments for the value of embedding citizenship throughout the curriculum will be echoed in this thesis.¹⁰² Power et al,¹⁰³ focus on citizenship for people with disabilities as social participation and independent living.¹⁰⁴ Whilst they consider the developments in the human rights framework,¹⁰⁵ to achieve this they view education as an expression of citizenship rather than a means of citizenship education.¹⁰⁶ Their focus on staff education rather than people with disabilities¹⁰⁷ creates a power imbalance because the knowledge is not going directly to people with disabilities.¹⁰⁸ Whilst there will be people who need staff to assist them, the focus of education should always be on people with disabilities. Rankin¹⁰⁹ argues that the Disability Movement has sought to refocus the conception of citizenship for people with disabilities onto the development of a positive disability identity at the level of the individual¹¹⁰ thus moving from the previous ideals of citizenship being focused on rights responsibility, equal opportunity, societal reaction and the fulfilment of roles prescribed by others.¹¹¹ She argues that these previous conceptions were problematic for people with disabilities, unwilling or unable to fit into naturalised groupings.¹¹² Conversely, the current wave conceptualises disability as difference and sees disability culture as imperative to empowerment and positive disability identity.¹¹³ A weakness of Rankin's argument is that she fails to consider that there will be a number of people

¹⁰⁰ *Ibid.* 53 and Essomba n.97. 17-19.

¹⁰¹ Boland n.98.

¹⁰² *Ibid.*

¹⁰³ A Power and others, *Active Citizenship and Disability: Implementing the Personalisation of Support* (1st edn, Cambridge 2013)

¹⁰⁴ *Ibid.* 55

¹⁰⁵ *Ibid.* 30-54

¹⁰⁶ See for example Power n. 103. 381, 419, 405, 266,

¹⁰⁷ *Ibid.* 483

¹⁰⁸ Select Committee on the Equality Act 2010 and Disability Oral and Written Evidence HL (24 March 2016)

¹⁰⁹ J C Rankin, 'Disability, Citizenship & Identity' (PhD, York University 2009)

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² *Ibid.*

¹¹³ *Ibid.*

with disabilities who do not wish to publicly express a disability identity because they may fear stigmatisation. Previous studies¹¹⁴ indicate students can often be reluctant to claim the disability identity needed to access support for fear of stigma. Despite Rankin's argument for an individualised approach to citizenship, the development of a culture and cultural practices is reliant on the formation of group ideals.

Dignity

Schroeder responds to Kant's emphasis on autonomy to ascribe dignity by considering the status of people in a permanent vegetative state (PVS), who have lost their ability to direct their own lives. Under Kant's definition they would no longer have dignity.¹¹⁵ This applies to people with learning difficulties who have to work with others to live their lives.¹¹⁶ Schroeder reformulates the Kantian definition to attribute dignity to all humans, stating that 'dignity is an inviolable property of all human beings, which gives the possessor the right never to be treated simply as a means, but always [...] as an end.'¹¹⁷ However, this reworking turns dignity into a label without substance. Maintaining Kantian vocabulary, ends and means, merely removes the element she disagrees with, without considering what makes dignity an inviolable property of all human beings rather than all beings.

For Quinn, denying people with disabilities social experiences and participation places them at a greater disadvantage in terms of autonomy, decision making than any cognitive impairment.¹¹⁸ He notes that everybody's life plans, regardless of disability

¹¹⁴ See 'Previous Studies' on Literature Review

¹¹⁵ D Schroeder, 'Dignity: One, Two, Three, Four, Five, Still Counting' [2010] Cambridge Quarterly of Healthcare Ethics 121.

¹¹⁶ The Department of Health describes a learning difficulty as: significantly reduced ability to understand new or complex information, to learn new skills, reduced ability to cope independently which starts before adulthood with lasting effects on development. Department of Health, 'Valuing People: A New Strategy for Learning Disability for the 21st Century' (learningdisabilities.org.uk 2001) <<http://www.learningdisabilities.org.uk/help-information/about-learning-disabilities/definition-learning-disability/>> accessed 27th February 2014

¹¹⁷ Schroeder n.115. 122

¹¹⁸ G Quinn, Rethinking personhood: New Directions in Legal Capacity Law & Policy. Or How to put the 'Shift' back into 'Paradigm Shift' (1st, University of British Columbia, Vancouver, Canada 2011) 17.

status, are different.¹¹⁹ Additionally, he acknowledges the limits and limitations of supported decision making, such as difficulties in delineating between supporting somebody to make the decisions that best achieve their goals and advising somebody in such a way that they make the decision based on the supporters' beliefs and ideas. Quinn's choice to collocate this idea with abuse,¹²⁰ does not adequately consider the nature of certain relationships. Parent supporters may influence the decision making of dependent adult children out of a sense of anxiety rather than a motivation for self-preservation. They may not agree with the offspring's life choices regardless of impairment. Empowerment should move people with disabilities from object to subject, agent rather than victim.

Several authors have identified that dignity has an important role as an emblem of intention and intent,¹²¹ despite it being a complex concept to define and incorporate into legal systems and society. Mahlmann identifies that dignity is a key element to legal debates and development,¹²² and that any definition must include protection of autonomy, equality and respect.¹²³ The lack of a dominant source for dignity makes a definition difficult.¹²⁴ However, he argues that there is an identifiable set of strands across national, international and supranational law which give a sense of the content of dignity and these include autonomous subjectivity, basic respect, non-instrumentalisation, non-objectification and non-reification.¹²⁵ Difficulties in defining these lead to the problem of justification, as genealogy of a concept can assist in its

¹¹⁹ *Ibid.* 8.

¹²⁰ *Ibid.* 19.

¹²¹ See M Rosen, Dignity: The Case Against. in C McCrudden (ed), *Understanding Human Dignity* (OUP 2014) 143, C Gearty, Socio-Economic Rights, Basic Needs, and Human Dignity: A Perspective from Law's Front Line. in C McCrudden (ed), *Understanding Human Dignity* (OUP 2014) 164, M Mahlmann, The Good Sense of Dignity: Six Antidotes to Dignity Fatigue in Ethics and Law. in C McCrudden (ed.), *Understanding Human Dignity* (OUP 2014) 610-611, B Schlink, The Concept of Human Dignity: Current Usages, Future Discourses. in C McCrudden (ed.) *Understanding Human Dignity* (OUP 2014) 633-634 and L A Basser, Human Dignity. in Rioux and others (eds), *Critical Perspectives on Human Rights and Disability Law* (Martinus Nijhoff Publishers 2011) 18.

¹²² M Mahlmann, The Good Sense of Dignity: Six Antidotes to Dignity Fatigue in Ethics and Law. in C McCrudden (ed.), *Understanding Human Dignity* (OUP 2014) 593.

¹²³ *Ibid.*

¹²⁴ *Ibid.* 594-598

¹²⁵ *Ibid.* 600

legitimacy.¹²⁶ Attempts to create the legitimacy of dignity usually fall within religious narratives which are not always shared by all members of a society.¹²⁷ Concretisation is problematic as law and society needs to create limits around what can and cannot be included within a concept to retain its value.¹²⁸ Mahlmann argues that defining the content and purpose of dignity, provides assistance in how to interpret and apply other human rights because the expression of these rights is loaded with a sense of dignity.¹²⁹ Universality presents difficulties, Mahlmann argues that relativism is not an attractive argument, it is important that we remember that dignity was formed within a variety of cultures and traditions therefore the concept may be subject to change over time.¹³⁰ Lastly, Mahlmann identifies that dignity has become the author of its own misfortune. The legal and political establishments use it as a shorthand for shared commonality of the human experience, meaning that it is unquestionable for fear of losing it.¹³¹ This project will critique dignity whilst acknowledging its power for people with disabilities as a tool for communicating their needs to society and uniting society in the process of change. Gearty¹³² questions the role of judges and the law in ensuring a useful application of the valuable concept of dignity. Instead he argues that members of society should take control and petition the government to draft and implement the vision of dignity they want to see.¹³³ He argues that there has been a tendency to allow Human Rights lawyers to take control of the awareness and implementation of Human Rights from the public.¹³⁴ Similar issues exist in the Disability Studies and legal movement which will be explored later.¹³⁵ He explores the relationship between dignity and social economic rights arguing that its promise of universal entitlements is an

¹²⁶ *Ibid.* 602-604

¹²⁷ *Ibid.* 604-606

¹²⁸ *Ibid.* 609

¹²⁹ *Ibid.* 610-611

¹³⁰ *Ibid.* 613

¹³¹ *Ibid.* 614

¹³² C Gearty, Socio-Economic Rights, Basic Needs, and Human Dignity: A Perspective from Law's Front Line. in C McCrudden (ed), *Understanding Human Dignity* (OUP 2014) 164-165.

¹³³ *Ibid.*

¹³⁴ *Ibid.* 166-167

¹³⁵ See Disability Studies literature discussion p. 48-68

attractive but potentially dangerous ‘seduction’.¹³⁶ The integration of these into Law in a formalised way is problematic for several reasons.¹³⁷ Firstly, the vague expression of these rights could lead to a situation of raised expectation which would lead to greater amounts of litigation between the public and public bodies.¹³⁸ Secondly, it would require greater involvement from the courts in decision making that they are ill-equipped to participate in and this could be conceived of as undemocratic.¹³⁹ This indicates the barrier that procedure can play in realising rights. This thesis seeks to respond to these beliefs by suggesting a possible way of overcoming these shortfalls. As will be seen in the substantive chapters of this thesis, there are several areas within Disability Law where procedural limitations have overtaken, or in some cases diminished, the utility and effectiveness of the law so it is argued that this is a fertile and useful area to explore these issues.

Morality

This thesis views the relationship between law and morality similarly to Posner, that morality might have a role as a system of social control but that the effect that moralists believe that this will have in practice is often over stated.¹⁴⁰ Posner also highlights the internality and locality of morality, something we owe rather than owed and providing that citizens are given access to what they need to achieve participation within the communities to make a life, no moral duties are owed.¹⁴¹ Consequently, it is valid for people with disabilities to state these claims in the rhetoric of what they owe so that it might be reciprocated by commonality, but that this rhetoric without animation,

¹³⁶ *Ibid.* 164

¹³⁷ *Ibid.* 164-165

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*

¹⁴⁰ RA Posner, *The Problematics of Moral and Legal Theory* (Harvard University Press 1999) 4

¹⁴¹ *Ibid.* 4-5

through explanation and critique is useless. This thesis argues that this is a principal problem with the position of morality and moral concepts in the human rights framework in relation to disability, that simply by focusing legislation around concepts such as: Dignity, Autonomy and Respect, though failing to ensure and facilitate engagement with them, which as remnants of the charity approach¹⁴² that the conscience will be pricked automatically and behaviour will change, gives morality greater meaning and power to influence to behaviour than it has.¹⁴³ Given that the charity approach to disability has been rejected,¹⁴⁴ it is difficult to support such parallels in legal approaches, which are framed in the rhetoric of empowerment.¹⁴⁵ Moreover, this thesis concurs with Posner's view of morality as something which is cyclical and that for every moral position advanced the contrary position could be equally valid.¹⁴⁶ Therefore it argues that introducing students to ideas and discourses around disabilities to enable them to form an understanding of these concepts to increase both consciousness and understanding of why these concepts have been given value through being incorporated into legislation. Posner also highlights a further reason as to why the issue of morality and values in higher education is problematic, the potential for superiority, which an academic's personal moral code may not live up to.¹⁴⁷

In terms of respect, this thesis follows the Razian approach to respect that people are worthy of respect, by virtue of the fact that due to shared humanity and experience people who receive respect are just as able to feel wounded by a lack of respect as

¹⁴² *Ibid.* 34

¹⁴³ *Ibid.* 12-13, 38- 39

¹⁴⁴ See n. 7,8, 9, 10 and 11.

¹⁴⁵ See for example United Nations, 'Secretary-General Hails Adoption of Landmark Convention on Rights of People with Disabilities' (*Meetings coverage and Press releases*, 13 December 2006) <<http://www.un.org/press/en/2006/sgsm10797.doc.htm>> accessed 21 March 18 and Scope, 'The Disability Discrimination Act 1995: The campaign for civil rights' (*youtube.com*, 2 November 2015) <<https://www.youtube.com/watch?v=dwP1xuZZFuY>> accessed 15 May 2017

¹⁴⁶ Posner, n. 140 40-41

¹⁴⁷ *Ibid.* 75-77

anyone that they withhold it from.¹⁴⁸ However, it takes issue with Raz's choice to argue that 'the comatose'¹⁴⁹ are not able to participate in this osmosis recognition of respect, because this could have negative implications for those in PVS, similarly to the issues with traditional conceptions of dignity.¹⁵⁰ Moreover, this thesis questions Raz's dismissal of reciprocity between generations and other groups in terms of respect,¹⁵¹ because this does not explain how and why efforts to formally protect and recognise the rights of certain groups have matured and continued over the years, as the development of disability rights legislation shows. Though he links his conception of dignity to Kant,¹⁵² the re focusing of autonomy into personhood¹⁵³ in this thesis, means that this does not present barriers to applying it to disability rights. Consequently, this thesis does not deny the existence of values in life and in education, it argues that it necessary to acknowledge this and to present students with the opportunity to evaluate these and to draw their own conclusions.

Law

This project views the current approach to the disability rights legal framework at all levels as an example of Expressive Law. This theory states that law is a communication of what society hopes to achieve in relation to a certain social phenomena and that there are certain stages that must be passed to allow citizens to acquire the habit of complying with the law.¹⁵⁴ These include deterrents through the form of economic or social sanctions,¹⁵⁵ legitimacy which requires that the people following the law believe

¹⁴⁸ J Raz, *Value, Respect and Attachment* (Cambridge University Press 2001) 169-170

¹⁴⁹ *Ibid.* 170

¹⁵⁰ See Schroeder n.115, 121.

¹⁵¹ Raz n. 148. 125

¹⁵² *Ibid.* 130-140

¹⁵³ G Quinn, Rethinking personhood: New Directions in Legal Capacity Law & Policy. Or How to put the 'Shift' back into 'Paradigm Shift' (1st, University of British Columbia, Vancouver, Canada 2011)

¹⁵⁴ R H McAdams, *The Expressive Powers of Law: Theories and Limits* (Harvard University Press 2015) 11-13

¹⁵⁵ *Ibid.* 2-3

in a legitimate order that it represents,¹⁵⁶ a coordinating function where people look for and seek order,¹⁵⁷ the power of suggestion,¹⁵⁸ a focal point and an information function.¹⁵⁹ Stein¹⁶⁰ and Geisinger¹⁶¹ have applied Expressive Law Theory to the Americans with Disabilities Act (ADA) as a means of explaining its ability to produce social change, by educating mainstream individuals about people with disabilities¹⁶² and creating sanctions for failure to do so.¹⁶³ This education occurs by highlighting legislative findings about the position of people with disabilities in society and the effect of social exclusion rather than presenting exclusion as something that is inherent and necessary.¹⁶⁴ Encouraging people to think about making public spaces accessible to people with disabilities performed a secondary educative function.¹⁶⁵ Stein asserts that the ADA has a role to frame disability based discrimination as a moral wrong, again reinforcing the problematic relationship between disability and morality as discussed previously.¹⁶⁶ Stein and Geisinger extend McAdams argument to the ADA suggesting that the most important marker for the acceptance of a new law is not judicial reasoning and output but rather compliance at the level of the individual.¹⁶⁷ Consequently, they argue that legislation such as the ADA should view compliance in terms of discreet inferential mechanisms which take into account differing social attitudes at different points.¹⁶⁸ The authors argue that by measuring compliance the expressive enforcement element of the law is carried out in three steps. Firstly, compliance carries a clear audience meaning, secondly, compliance is visible to the public and thirdly, the existence of compliance must be the basis for inferring a change

¹⁵⁶ *Ibid.* 3

¹⁵⁷ *Ibid.* 5

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.* 6-7

¹⁶⁰ MA Stein, 'Under the Empirical Radar: An Initial Expressive Law Analysis of the ADA (Book Review)' [2004] 90(4) Virginia Law Review 1151-1191

¹⁶¹ AC Geisinger and MA Stein, 'Expressive Law and the Americans with Disabilities Act' [2016] 114(6) Michigan Law Review 1061-1079

¹⁶² Stein n. 160. 1184-1185

¹⁶³ *Ibid.* 1185

¹⁶⁴ *Ibid.* 1186

¹⁶⁵ *Ibid.*

¹⁶⁶ See Literature Review, 'Disability'

¹⁶⁷ Geisinger and Stein n. 161

¹⁶⁸ *Ibid.* 1076

in attitudes amongst society.¹⁶⁹ The UK has had a tendency to view disability related law through the lens of Expressive Law Theory as the goal of the Disabled Peoples Movement (DPM) has been to raise awareness about the rights of people with disabilities in society and to change social attitudes and behaviours concerning their integration and treatment by society.¹⁷⁰ However, in practice, this presents various issues. It is arguable that the sanction element of Disability Law outside of employment, can be said to be inverted. The aim of a sanction is to change attitudes or behaviour by financial deterrent.¹⁷¹ However, concepts of reasonable adjustment and undue burden place the sanction on people with disabilities. If an adjustment is deemed to be too costly then the service provider or institution does not have to make it.¹⁷² At the same time, they have a socially accepted defence in the notion of 'undue burden'.¹⁷³ Placing such limitations on both the expectations of people with disabilities and the behaviour of institutions in response to their needs, society may question the legitimacy of the law. If it was deemed to be legitimate by the legislature and the government then these exemptions would not exist. Moreover, because the status of disability is not internalised by society as a whole,¹⁷⁴ it is not yet socially taboo¹⁷⁵ for service providers not to cater to the needs of people with disabilities.¹⁷⁶ The law relating

¹⁶⁹ *Ibid.*

¹⁷⁰ Scope, 'The Disability Discrimination Act 1995: The campaign for civil rights' (*youtube.com*, 2 November 2015) <<https://www.youtube.com/watch?v=dwP1xuZZFuY>> accessed 15 May 2017

¹⁷¹ Geisinger and Stein n. 161 1062-1065 and 1070

¹⁷² Equality and Human Rights Commission, 'What do we mean by reasonable?' (*Equality and Human Rights Commission*, 12 Jul 2016) <<https://www.equalityhumanrights.com/en/multipage-guide/what-do-we-mean-reasonable>> accessed 12 January 2018

¹⁷³ *Ibid* and CRPD, Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (Employment Equality Directive) Art. 5 and Equality Act 2010. See *Cordell v Foreign and Commonwealth Office* and Equality and Human Rights Commission, 'What do we mean by reasonable?' (*Equality and Human Rights Commission*, 12 Jul 2016) <<https://www.equalityhumanrights.com/en/multipage-guide/what-do-we-mean-reasonable>> accessed 12 January 2018

¹⁷⁴ Stein n. 160.

¹⁷⁵ See for example media reports concerning the cost of Disability Rights implementation. M Easton, 'Do disability rights cost too much?' (*bbc.co.uk*, 17 January 2012) <<http://www.bbc.co.uk/news/uk-16596799>> accessed 1 August 2017 and BBC News Cornwall, 'Councillor considers resignation over disabled comment' (*bbc.co.uk*, 27 February 2013) <<http://www.bbc.co.uk/news/uk-england-cornwall-21594109>> accessed 1 August 2017

¹⁷⁶ See for example the British Social Attitudes Survey 2012 where increased spending on Disability Benefits was supported by 58% of respondents in comparison with 70% in relation to the state pension. Also, the number of respondents wishing to see more spending on benefits for people with disabilities decreased from 74% in 1998 to 53% in 2011. Fewer people wished to see a decrease in spending on benefits caring for people with disabilities, however this still decreased from 84% in 1998 to 75% in

to the rights of people with disabilities can be said to have a coordinating function. Cotterrell argues that factors such as environmental, internal, external and economic pressures drive the speed of social change.¹⁷⁷ He argues that law is seen as a political creation and questions whether written law is a prerequisite for law as an instrument of government rather than simply a codification of social norms.¹⁷⁸ Writing down laws renders them identifiable as distinct from customary behaviour and into the instruments of political power.¹⁷⁹ This thesis will expand on previous research that the current notion of economic resource allocation regarding disability hampers rather than assists social change.¹⁸⁰ For Cotterrell flexible forms of social change question law's capacity to bring about change rather than about the origins of legislation or its relationship with judicial process.¹⁸¹ This argument is unsustainable in terms of law as a process of social change, it makes social change appear as an unsubstantiated pipedream by removing any formal mechanism by which to achieve it.¹⁸² Social institutions need to understand and fulfil their obligations to ensure access, but a lack of education about rights and equality means that people cannot coordinate effectively around a shared legislative goal. This weakens the suggestive element of expressive law because without coordination, society is unable to comprehend the benefits of compliance and therefore cannot see the justification for the law which helps to sustain or motivate compliance in practice. This project explores how these weaknesses might be remedied by liberal legal education.

2011. NatCen, 'British Social Attitudes 2012' (*British Social Attitudes*, 2012) <<https://docs.google.com/spreadsheets/d/1IYdiUVEVeZrPB2-v4gaMmHG7zN8veGfHacvtWTsjOuE/edit#gid=0>> accessed 1 August 2017

¹⁷⁷ R Cotterrell, *The Sociology of Law: An Introduction* (2nd edition, Butterworth & Co Ltd 1992)48.

¹⁷⁸ *Ibid.*

¹⁷⁹ *Ibid.*

¹⁸⁰ See A Pearson 'A Comparative Study of 'Reasonable Adjustment' and 'Undue Burden' Provisions for People with Disabilities Accessing Public Transport Services under European Union Law.' Keele University September 2014, A.V Pearson, 'What's worth got to do with it? Language and the socio-legal advancement of disability rights and equality', (2014) 20(3) Web JCLI, A.V Pearson, 'The debate about wheelchair spaces on buses goes 'round and round': access to public transport for people with disabilities as a human right'. (Spring 2018) 69(1) NILQ

¹⁸¹ Cotterrell n. 177

¹⁸² *Ibid.* 64-65.

Legal Consciousness

A review of the literature using search terms ‘legal consciousness UK disability’ yields no relevant results.¹⁸³ However, legal consciousness literature highlights its importance in creating a legal system and by consequence a society which represents disadvantaged people.¹⁸⁴ It is necessary that people gain a sense of empowerment and control over their situation within society through legal redress.¹⁸⁵ In response, this thesis argues that including discussions around disability, human rights, the law and society at the undergraduate level presents opportunities to explore the potential effects of rights awareness and citizenship to assist people with disabilities to access and protect their rights. This would overcome a concern in the literature that longitudinal data is difficult to obtain.¹⁸⁶ The systems of higher education would lead to standardisation, at the foundation stage, and longitudinal data could be gathered through student evaluations. Boyd White argues that legal literacy is a multi-level process which enables people to decode the hidden discourse and syntax of the law¹⁸⁷ to help them to become empowered citizens, and that failure to do this can lead to frustration, when they are confused by the disparity between the language of law and results.¹⁸⁸ Cowan highlights that increasing legal literacy amongst disadvantaged groups has the potential to combat the depersonalisation and a lack of dignity.¹⁸⁹ Though, he highlights that it is important not to idealise what can be achieved.¹⁹⁰ Grimes links increased understanding of rights with the concept of ‘active citizenship,’¹⁹¹ arguing that programmes such as ‘Street Law’ in UK Law schools can offer students the opportunity to engage in active citizenship.

¹⁸³ As of 24th of August 2017.

¹⁸⁴ S Khair, 'Evaluating Legal Empowerment: Problems of Analysis and Measurement' [2009] 1(1) Hague journal on the Rule of Law 33-37

¹⁸⁵ *Ibid.* 33

¹⁸⁶ *Ibid.* 36

¹⁸⁷ J Boyd White, 'Invisible discourses of the law: Reflections on legal literacy and general education' [1983] 54 (2) Colorado Law Review 145-146

¹⁸⁸ *Ibid.* 145

¹⁸⁹ D Cowan, 'Legal Consciousness: Some Observations' [2004] 67(6) The Modern Law Review. 942

¹⁹⁰ *Ibid.*

¹⁹¹ R Grimes, 'Legal literacy, community empowerment and law schools—some lessons from a working model in the UK' [2003] 37(3) The Law Teacher 277

Like Cowan, he cautions against students idealising¹⁹² what can be achieved and highlights issues such as staffing and funding.¹⁹³ The thesis hopes to overcome these issues by using existing curriculum models, reducing the need for additional preparation and involvement by staff, funding could be drawn from existing sources. Bankowski and Mungham are critical of these programmes arguing that they simply teach lawyers '[...]to impose their definition of social problems on people who cannot fight back' meaning that what is meant to be helpful could become a hindrance and gives little understanding about the way that society and the law can create disadvantage as well as remedy it.¹⁹⁴ Furthermore, they argue that these initiatives increase access to the current legal system rather than pushing for change where necessary which continues social control.¹⁹⁵ Krishnadas¹⁹⁶ has provided parliamentary evidence as to the importance of outreach work by undergraduate law students to assist underrepresented groups to access justice as McKenzie Friends. Though this focused on vocational rather than liberal approaches to legal education it demonstrates the potential value and impact of introducing students to such issues and the changes that this awareness can help to facilitate, which could also apply to people with disabilities and offers an example of engagement with those outside of academia. Lobel¹⁹⁷ argues that this occurs when groups are sold the myth of rights and are encouraged to believe that litigation is the only way to proceed¹⁹⁸ and that individual victories can remove some of the impetus from group struggles.¹⁹⁹ In response, he argues that it is important

¹⁹² *Ibid.* 280-283

¹⁹³ *Ibid.*

¹⁹⁴ Z Bankowski and G Mungham, *Images of Law* (Routledge & Kegan Paul Ltd 1976) 3-4

¹⁹⁵ *Ibid.* 4-6

¹⁹⁶ J Krishnadas, 'Written evidence from the Community Legal Outreach Collaboration, Keele, (CLOCK), Keele University (LAS 68)' (*Impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012*, 13 May 2014) <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/impact-of-changes-to-civil-legal-aid-under-laspo/written/8970.html>> accessed 22 March 2018

¹⁹⁷ O Lobel, 'The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics' [2007] 120(4) *Harvard Law Review* 937-988

¹⁹⁸ *Ibid.* 948-954

¹⁹⁹ *Ibid.* 947

for individuals and states to recognise legal pluralism²⁰⁰ highlighting the importance of extra-legal activism in producing change.²⁰¹

Whilst this project agrees in terms of issues such as co-option, the assumption to activism is difficult. Liberal legal education could be used as a training ground to make members of society aware of the limitations of law in the development of rights, giving skills and ability to pass on knowledge to open the discussion. This acknowledges legal pluralism and the possibility of development of the law by certain groups without the attendant problems of activism. Though legal consciousness in relation to people with disabilities is relatively underexplored within the literature, access to justice for people with disabilities is an emerging field. This literature focuses on the inclusion of disability in vocational and clinical education for law students to give them an understanding of the issues facing people with disabilities when accessing the justice system.²⁰² The current project argues that this focus is short sighted, recent statistics indicate that far fewer people go on to practice law than are accepted onto law courses in England and Wales.²⁰³ Authors give no indication of how disability would be integrated into legal education in practice.²⁰⁴ Both Larson and Flynn consider the role of advocacy and self-advocacy in improving access to justice for people with disabilities. However, there are several weaknesses in their arguments. Larson uses the pronouns ‘they’ and ‘we’ meaning people with disabilities ‘they’ and legal professionals

²⁰⁰ *Ibid.* 967-968

²⁰¹ *Ibid.* 984-988

²⁰² E Flynn, *Disabled justice?* (Ashgate, Farnham 2015) 128-140, O Lewis, The Expressive, Educational and Proactive Roles of Human Rights: An Analysis of the United Nations Convention on the Rights of Persons with Disabilities. in B McSherry and P Weller (eds), *Rethinking Rights-Based Mental Health Laws* (Oxford: Hart Publishing 2010), DA Larson, 'Access to Justice for Persons with Disabilities: An Emerging Strategy' [2014] 3(2) *Laws* 220-238 and S Ortoleva, 'Inaccessible Justice: Human Rights, Persons with Disabilities and the Legal System' [2011] 17(2) *ILSAJ Int'l & Comp L*

²⁰³ The Law Society, 'Entry trends' (lawsociety.org.uk, 2017) <<https://www.lawsociety.org.uk/Law-careers/Becoming-a-solicitor/Entry-trends/>> accessed 2 October 2017

²⁰⁴ S Ortoleva, 'Inaccessible Justice: Human Rights, Persons with Disabilities and the Legal System' [2011] 17(2) *ILSAJ Int'l & Comp L* 286, E Flynn, *Disabled justice?* (Ashgate, Farnham 2015). 128, O Lewis, The Expressive, Educational and Proactive Roles of Human Rights: An Analysis of the United Nations Convention on the Rights of Persons with Disabilities. in B McSherry and P Weller (eds), *Rethinking Rights-Based Mental Health Laws* (Oxford: Hart Publishing 2010) and DA Larson, 'Access to Justice for Persons with Disabilities: An Emerging Strategy' [2014] 3(2) *Laws* 221

‘we’²⁰⁵ creating a sense of separation and hierarchy implying inequality. Larson’s writing around barrier removal in the justice system is almost colonial with a tone of superiority and morality that is best exemplified by: ‘and we can improve access to justice for people with disabilities by training advocates who are not only knowledgeable concerning relevant laws and regulations, but can interact effectively on a personal, professional level with persons who have disabilities. In addition to training persons without disabilities to advocate for those with disabilities, to make certain that people with disabilities have the opportunity to learn to advocate for themselves and for other people with disabilities.’²⁰⁶ This ignores the engagement of both the DPM²⁰⁷ and Civil Rights Movement in America with activism to produce change long before access to justice for people with disabilities became an academic research topic which shows Larson’s lack of nuanced understanding of the context he is working in. Strengths of Larson’s argument are his recognition that barriers such as technology, architecture and access to education for people with disabilities wishing to self-advocate²⁰⁸ creates significant barriers to access to justice and incorporating these into legal learning²⁰⁹ is an aim of this thesis. Flynn’s arguments for a specific advocacy service for people with disabilities is problematic. She does not consider the potential for bias in advocates who gain work and respect from the wider profession and would not want to damage their contacts.²¹⁰ Neither does she consider the impact of recent changes in legal funding in cuts to legal aid in her discussion about how such a service could be funded.²¹¹ She also briefly considers the potential merit in exploring disability

²⁰⁵ DA Larson, 'Access to Justice for Persons with Disabilities: An Emerging Strategy' [2014] 3(2) *Laws* 221

²⁰⁶ *Ibid.*

²⁰⁷ See for example, F Pelka, *What we have done: An Oral History of the Disability Rights Movement* (University of Massachusetts Press 2012) and D Fleischer and F Zames, *The Disability Rights Movement: From Charity to Confrontation* (Temple University Press 2011)

²⁰⁸ Larson n.205. 228-232

²⁰⁹ *Ibid.* 225-227

²¹⁰ E Flynn, 'Making human rights meaningful for people with disabilities: advocacy, access to justice and equality before the law' [2013] 17(4) *The International Journal of Human Rights* 503-505

²¹¹ See for example Gov.uk, 'Legal aid' (*gov.uk*, 2017) <<https://www.gov.uk/legal-aid/eligibility>> accessed 22 September 2017

related issues with legal education at the undergraduate level, but gives little insight into how this might be achieved in practice.²¹²

Integrating understanding of disability issues into liberal legal education at the undergraduate level, means that future legal practitioners would have an understanding of disability issues and their relationship to the law formed outside of career pressures. It could create citizens who have no intention of practicing the law but have sufficient knowledge to enable them to work in other areas, which would help the system to become more accessible overall. Lewis argues that all members of society need to be educated to understand the role of and existence of disability legislation to protect rights,²¹³ but that this only focuses on awareness raising rather than critique within law schools and other educational institutions. However, he fails to consider what is needed to bridge the gap between rhetoric and practice and the implication of pedagogy and values, and what these either communicate or conceal from students. The thesis argues that incorporating critical proactive citizenship into liberal legal education is what differentiates it from other research. In 2017, Birmingham University launched the 'Everyday Decisions Project'²¹⁴ considering legal construction of decision-making and its relationship to people with cognitive impairment.²¹⁵ The thesis has no direct interaction with people with disabilities. Rather, it critically examines and assesses the legislative framework to present evidence as to why legal consciousness is important to advance the rights of people with disabilities and the potential of legal education. Contrary to the Birmingham project, this thesis is doctrinal and focuses on disability generally. It argues for the importance of education to both produce and

²¹²E Flynn, *Disabled justice?* (Ashgate, Farnham 2015) 127

²¹³ O Lewis, The Expressive, Educational and Proactive Roles of Human Rights: An Analysis of the United Nations Convention on the Rights of Persons with Disabilities. in B McSherry and P Weller (eds), *Rethinking Rights-Based Mental Health Laws* (Oxford: Hart Publishing 2010) 117-118

²¹⁴ E Tascioglu, 'Researching Law in Everyday Life of People with Mental Disabilities' (*Legalcapacity.org.uk*, 24 March 2017) <<http://www.legalcapacity.org.uk/everyday-decisions/researching-law-in-everyday-life-of-people-with-mental-disabilities/>> accessed 25 August 2017

²¹⁵ *Ibid.*

maintain legal consciousness around disability rights. However, in contrast to Silbey's inversion of the doctrine and effect approach to legal consciousness²¹⁶ which focuses on the role of people over doctrine,²¹⁷ this project focuses on the subsequent step of the reification of doctrine over action. Other researchers such as Edelman et al²¹⁸ have focused on the link between law and social movements to bring legal consciousness. This project evaluates the effect of this involvement to identify strengths and weaknesses in the resulting framework and to argue for the need for greater critique and decolonisation of ideas to prevent stasis. This thesis builds on Oliver's recognition of the role of education,²¹⁹ either to prevent people with disabilities from accessing citizenship through exclusion and complacency, or to build knowledge of these rights and to empower people to enjoy them. This thesis argues that greater understanding of the legal protections around disability rights through liberal legal education in universities has the potential to strengthen the role of education to empower that Oliver recognised.

Why Liberal Legal Education?

The literature²²⁰ indicates that in the majority of law schools within the UK, a liberal education is merely a signifier for non-vocational education that is not regulated by professional bodies.²²¹ There is an indication that the term was adopted to anchor the law school within the university to counteract Veblen and Becher's view of university

²¹⁶ SS Silbey, 'After Legal Consciousness' [2005] 1(1) Annual Review of Law and Social Science 328-368

²¹⁷ *Ibid.* 326-328

²¹⁸ LB Edelman and others, 'On Law, Organizations, and Social Movements' [2010] 6 Annu Rev Law Soc Sci 653-685

²¹⁹ M Oliver, *Understanding Disability: From Theory to Practice* (Palgrave 1996) 90-94.

²²⁰ See for example F Cownie, 'Alternative values in legal education' [2003] 6(2) Legal Ethics 159-161, F Cownie, *Legal academics : culture and identities* (Hart 2004) 30-35, A Bradney, *Conversations, Choices and Chances: The Liberal Law School in the Twenty-First Century* (Hart, 2003) 31-34, B Hepple, 'The Renewal of the Liberal Law Degree' [1996] 55(3) Cambridge Law Journal 471-477, C Stolker, *Rethinking the Law School: Education, Research, Outreach and Governance* (Cambridge University Press, 2014) 130-135 and 137-141.

²²¹ The Quality Assurance Agency for Higher Education, 'UK Quality Code for Higher Education Part A: Setting and maintaining academic standards' [2015] Subject Benchmark Statement UK Quality Code for Higher Education Part A: Setting and maintaining academic standards Law 4

law schools as suspicious and unnecessary.²²² Cownie,²²³ Burridge and Webb²²⁴ identify that this superficial engagement with liberal education comes from a lack of understanding of educational theory in law schools and teacher training necessary to engage with the issues that a liberal education might raise. It is important that a liberal education goes beyond highlighting perceived injustices to students through socio-legal studies misapplied through lack of understanding²²⁵ or clear definition,²²⁶ potentially risking accusations of social engineering; to engaging students in a conversation based on reasoned assessment which is the central tenant of Western liberal legal education.²²⁷ This permeability in terms of understanding means that a liberal legal education could have little more concrete meaning than enabling an undergraduate syllabus to incorporate a socio-legal approach to disability without deeper analysis of what its absence indicates about social and legal responses to disability. Leighton argues that the liberalisation of legal education has failed because of changes in the provision, such as the development of crammers²²⁸ and a failure to abandon doctrinal methods.²²⁹ Guth and Ashford argue that socio-legal and liberal approaches to law degrees and inclusion of wider issues, which could include disability, is possible under the Legal Education and Training Review (LETR); but academics must argue for this to prevent increasing colonisation by the professions in a drive for vocationalism.²³⁰

²²² Veblen in G Geis, 'Thorstein Veblen on Legal Education' [1957] 10(1) J Legal Educ. 62-67 and T Becher, *Academic Tribes and Territories* (Buckingham, Open University Press, 1989) 30.

²²³ F Cownie, 'Twining, teachers of law and law teaching' [2011] 18(1-2) International Journal of the Legal Profession 129-132

²²⁴ R Burridge and J Webb, 'The Values of Common Law Legal Education: Rethinking Rules, Responsibilities, Relationships and Roles in the Law School' [2007] 10(1) Legal Ethics 90-96 and R Burridge and J Webb, 'The values of common law legal education reprised' [2008] 42(3) The Law Teacher 264-265

²²⁵ S Wheeler and P Thomas, Socio-Legal Studies. in D Hayton (ed), *Law's Future(s)* (Hart Publishing 2000) 267-274

²²⁶ *Ibid.* 272

²²⁷ A O'Hear and M Sidwell, Introduction. in A O'Hear and M Sidwell (eds), *The Social Freedom: A Liberal Education Reader from Plato to the Present Day* (Imprint Academic 2009) 5

²²⁸ P Leighton, 'The LLB as a liberal degree? A reassessment from an historical perspective' [2015] 22(1) International Journal of the Legal Profession 95

²²⁹ *Ibid.* 98-99

²³⁰ J Guth and C Ashford, 'The Legal Education and Training Review: regulating socio-legal and liberal legal education?' [2014] 48(1) The Law Teacher 18-19

Classical conceptions of liberal education focused on both physical and moral correction and perfection,²³¹ which would exclude people with disabilities.²³² Latterly, widening participation²³³ of liberal education was criticised²³⁴ for focusing on output rather than the process of education which makes its application to contemporary mass university education complex. A liberal education is not concerned with agreement, only the ability to discuss and consider these issues from a basis of freedom and reason.²³⁵ In response to the Christian moralisation²³⁶ of liberal education, Mill focused on the meaning of truth and how to assess it²³⁷ rather than people allowing their ‘reason [to be] cowed, by the fear of heresy.’²³⁸ He advocates the objective appraisal of contrary ideas to seemingly established truths as they often ‘contain a portion of truth: and since the general or prevailing opinion on any subject is rarely or never the whole truth, it is only by the collision of adverse opinions, that the remainder of the truth has any chance of being supplied.’²³⁹

O’Hear argues that morality cannot be removed from education, given its centrality to the experience of students,²⁴⁰ and that moral scepticism is unsustainable as human are predisposed to the good and that this is rooted in more than self-interest.²⁴¹ His justification for this view, is the sanctity of human life.²⁴² However, the permissibility of late abortions due to foetal abnormality²⁴³ challenges this view. His argument that

²³¹ O’Hear and Sidwell, 16-17, 21 and D Hume, Of the Standard of Taste (1757) in A O’Hear and M Sidwell (eds), *The Social Freedom: A Liberal Education Reader from Plato to the Present Day* (Imprint Academic 2009) 127,129 and 130

²³² *Ibid.* 8-12

²³³ *Ibid.* 18-19

²³⁴ GH Bantock, GH Bantock: The Closing of the Grammars is the Closing of Minds. in A O’Hear and M Sidwell (eds), *The Social Freedom: A Liberal Education Reader from Plato to the Present Day* (Imprint Academic 2009)201-202

²³⁵ *Ibid.* 8

²³⁶ JS Mill, *On Liberty* (CreateSpace Independent Publishing Platform c2014) 30-31, 37

²³⁷ *Ibid.* 26-27

²³⁸ *Ibid.* 23

²³⁹ *Ibid.* 38

²⁴⁰ O’Hear, ‘The Good is not Reducible to Human Choice’ in A O’Hear and M Sidwell (eds), *The Social Freedom: A Liberal Education Reader from Plato to the Present Day* (Imprint Academic 2009) 230-231, 241

²⁴¹ *Ibid.* 232

²⁴² *Ibid.* 234

²⁴³ Abortion Act 1967 1 (1) (d)

students can discuss values, but only at a certain point in their education,²⁴⁴ is questionable because people who have benefitted from the existing system are less likely to challenge it than those who have not. This raises the need to distinguish between guiding approaches to values and imposition of values through education. O’Hear’s arguments that ‘awe and respect’²⁴⁵ are not reification²⁴⁶ is problematic when ‘awe and respect’ can be seen as the by-products of reification.²⁴⁷

Webb acknowledges that education is not always value free.²⁴⁸ Values are individual or personal standards of what is important and can guide choices in terms of conduct and decision making based on a persons relationship with society as a structure but a group of individuals.²⁴⁹ It can be difficult to suppress these as personal ideals which may be subconsciously expressed by the way that information is delivered to students. Morals on the other hand are an assessment of the rightness or wrongness of the action rather than the motive according to utilitarianism.²⁵⁰ By insisting that liberal legal education is a moral endeavour Webb is potentially advocating the indoctrination of students using the ‘banking’ system of education as outlined by Freire.²⁵¹ Additionally, decisions as to ‘goodness’ and ‘badness’ of actions depends upon the way that ethical conduct is viewed, Deontology focuses on the rightness or wrongness of actions themselves.²⁵² Consequentialist ethics focuses on the rightness or wrongness of the consequences actions. In relation to liberal education it is difficult to apply either approach because it is arguable that some actions or reforms brought about by a persons’ understanding of a situation may be considered ‘right’ by some but wrong by others depending on

²⁴⁴ *Ibid.* 238 and 241

²⁴⁵ *Ibid.* 242

²⁴⁶ *Ibid.* 242

²⁴⁷ See Theory Chapter

²⁴⁸ J Webb, ‘Taking Values Seriously: The Democratic Intellect and the Place of Values in the Law School Curriculum’ (Legal Studies Research Paper No. 2009-06 University of Warwick School of Law)

²⁴⁹ RJ Williams Jr, Change and Stability in Values and Value Systems: A Sociological Perspective. in M Rokeach (ed), *Understanding Human Values: Individual and Societal* (The Free Press 1979) 16

²⁵⁰ JS Mill, Utilitarianism. in G Sher (ed), *Utilitarianism and the 1868 Speech on Capital Punishment* (Hackett Publishing Company c2001) 18-19

²⁵¹ P Freire, *Pedagogy of the Oppressed* (3rd edn, Continuum 2005), 72

²⁵² I Kant, Groundwork for the Metaphysics of Morals. in AW Wood (ed), *Groundwork for the Metaphysics of Morals* (Yale University Press 2002) 10-13

their viewpoint and interpretation. Moreover, the consequentialist approach is difficult to apply. Assessing the morality of outcomes of an action depends on the individual assessment of the situation that led to the outcome and whether an action was good or bad. This depends on the individual's assessment of the information available. Under the virtue ethics perspective, the moral merit of action is based on an individual's character as the key element of ethical thinking, rather than rules about the acts. Decisions relating to the value of actions and other elements is determined by the agent carrying out the act according to their own character and values.²⁵³ Students are free to assess other people's values and decide if they wish to absorb them into their own moral codes. Newman argues that goodness is not measured by the outcome of liberal education²⁵⁴ but rather the ability to assess information in a reasoned way and to justify a perspective on the world rather than the perspective itself.²⁵⁵

Glanzer and Ream²⁵⁶ argue that a narrow idea of the role of education within universities may lessen the impact that they have on the moral shaping of their students.²⁵⁷ They highlight a central problem of the arguments surrounding the position of values and moral education in the university. Arguing that it is the purpose of the university to shape the moral character of the citizens who attend them,²⁵⁸ creates a counter argument that those who do not attend university either through choice or circumstance must lack morality. This has the potential to create a greater gulf between the university and society making it more difficult to engage the public with research and ideas if academics are perceived as the saviour of society. This could lead to indoctrination rather than consideration of moral positions and complacency,

²⁵³ Aristotle, *From The Nicomachean Ethics* W. D. Ross trans. (Oxford 1998).

²⁵⁴ J Newman, 'Discourse 7 Knowledge Viewed in Relation to Professional Skill' (*Newman Reader-Works of John Henry Newman*, 2007)

<<http://www.newmanreader.org/works/idea/discourse7.html>> accessed 19 January 2016.

²⁵⁵ *Ibid.*

²⁵⁶ PL Glanzer and TC Ream, 'Addressing the moral quandary of contemporary universities: rejecting a less than human moral education' [2008] 29(2) *Journal of Beliefs & Values* 113–123

²⁵⁷ *Ibid.* 121

²⁵⁸ *Ibid.* 113-114

that morality prevents issues from occurring²⁵⁹, risking the reproduction of the current hierarchy as identified by Kennedy.²⁶⁰

For Leavis, liberal education was to put both students and society in touch with the humane centre that would influence their way of looking at the world,²⁶¹ by inculcating within students a sense of sensitivity and sensibility, which enables them to produce sensitive and precise responses based on intelligence and integrity in terms of analysis and building their arguments.²⁶² Students must be able to build their own arguments rather than rehearse and repeat those of others.²⁶³ By restricting students to a pre-ordained notion of the humane centre it is possible that Leavis undermines the notion of a truly liberal education, which values and encourages the ability of students to process information and to form their own opinions. Bradney is critical of Leavis' conception of culture as something that excludes those who do not 'belong'.²⁶⁴ He argues that for the modern meritocratic institution seeking to draw staff from around the globe this is problematic.

The role of liberal education within legal education to potentially create Proactive Critical Citizens and advance Disability rights needs to be considered on three separate levels. For people with disabilities, Leavis's idea that liberal education helps to form a humane centre which has most value. Legal education about Disability rights and their role in providing people with disabilities with a position in the world and society is key to advancing and protecting these rights in the future. Recent reports suggest that the current communication of these ideals is lacking.²⁶⁵ It is arguable that universities can

²⁵⁹ J Webb, 'Being a Lawyer/Being a Human Being' [2002] 5(1&2) *Legal Ethics* 131-132

²⁶⁰ D Kennedy, 'Legal Education and the Reproduction of Hierarchy' [1982] *Journal of Legal Education* 594

²⁶¹ F Leavis, *Education and the University* (2nd edn, CUP 1943) 33-38

²⁶² *Ibid.* 35-36

²⁶³ A Bradney, 'Liberalising Legal Education' in F Cownie, *The Law School – Global Issues, Local Questions* (Ashgate Publishing Limited, Hampshire 1999) 4-5

²⁶⁴ *Ibid.*

²⁶⁵ Select Committee on the Equality Act 2010 and Disability Oral and Written Evidence HL (24 March 2016), Leonard Cheshire, 'Rights and reality Disabled people's experiences of accessing goods and services Executive

represent microcosms of society. If they become exemplars of accessibility, both by implementing the law in practice to increase accessibility to courses²⁶⁶ for students with disabilities and researching disability issues through a liberal education perspective, this could be valuable to people with disabilities, civil society and students. This would overcome classical interpretation of liberal education's preoccupation with physical and intellectual perfection. This potential of the university to assist in the development of the rights of people with disabilities both in practice and dissemination of ideas is well established in Disability Studies literature. Finkelstein argued that the university is critical in continuing the 'articulation of disabled peoples aspirations [...]'²⁶⁷ dependent on 'cerebral flexibility'²⁶⁸ and the challenge of rigid constructs when necessary.²⁶⁹ He argued that 'a Berlin wall' existed within universities to separate disability specific courses from others, demonstrating the barriers between non-disabled persons understanding of disability and that of a person with disabilities.²⁷⁰ He criticised the creation of Disability Studies²⁷¹ with an attendant academic elite, arguing that it had potential to stall development of new ideas.²⁷² Arguably, the current position of disability in undergraduate liberal legal education supports Finkelstein's concerns.

Summary' <<https://www.leonardcheshire.org/sites/default/files/Rights%20and%20reality%20-%20executive%20summary.pdf>> (accessed 22 May 2017), United Nations, 'Committee on the Rights of Persons with Disabilities' [2017] CRPD/C/GBR/CO/1 Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland 32(a) and Dr L Vanhala, 'The Baring Foundation: Working Paper No 2 on Better Use of the Law by the Voluntary Sector: Framework for Better Use of the Law by the Voluntary Sector' (August 2016) <<http://baringfoundation.org.uk/wp-content/uploads/2016/07/Framework-for-better-use-of-law-WPaper2-1.pdf>> (Accessed 16 June 2017)

²⁶⁶ This has been the subject of numerous previous research projects but at an institutional rather than subject level. See for example U O'Connor & A Robinson, 'Accession or Exclusion? University and the Disabled Student: A Case Study of Policy and Practice' [1999] 53 *Higher Education Quarterly* 88-103, M Fuller and others 'Barriers to learning: a systematic study of the experience of disabled students in one university' [2004] 29:3 *Studies in Higher Education* 303-318, T Tinklin, S Riddell, A Wilson, 'Disabled Students in Higher Education' [2004] CES Briefing No. 32 1 and O Konur, 'Teaching disabled students in higher education' [2006] *Teaching in Higher Education* 351-363, M Madriaga, 'Enduring Disablism: Students with Dyslexia and their Pathways into UK Higher Education and Beyond' [2007] 22(4) *Disability and Society* 405 and M Onnely and K Brocklemann, 'Out of the Disability Closet: strategic use of perception management by select university students with disabilities' *Disability and Society* 18 (35) [2003] 12

²⁶⁷ V Finkelstein, *Emancipating Disability Studies*. in T Shakespeare (ed), *The Disability Reader Social Sciences Perspectives* (Continuum 1998) 28-49

²⁶⁸ *Ibid.*

²⁶⁹ *Ibid.*

²⁷⁰ *Ibid.* 30-31

²⁷¹ *Ibid.* 33

²⁷² *Ibid.* 49

Barton argues that it is necessary to identify barriers to participation to develop inclusive policy and practice through engagement.²⁷³ Though his arguments pertain to school, they can be applied to higher education. Barton argues that the increasing neoliberalisation of education and the way that this is maintained makes emancipatory research imperative.²⁷⁴ Lynch argues that Barton's legacy is that universities need to be re-envisioned as places of scholarly work grounded in the principles of democracy, equality and care that form the heart of the public education tradition.²⁷⁵ She argues that this demands a dialogue with knowledge holders, that activists have much to teach theorists of education, which will democratise the social relations of teaching and learning. This will enable people with disabilities to contribute their own voices to the discussions around disability, society and education.²⁷⁶ Whilst Lynch's argument is strong, hoping to return to the pre-neoliberal era in universities is difficult to support because the change is so long established. This thesis argues that any change must be contextualised and focus on small significant changes made gradually to ensure acceptance at institutional levels. Bolt highlighted the importance of higher education generally, as a means of creating a more inclusive society for people with disabilities²⁷⁷ by including disability discourse into English courses.²⁷⁸ He argues that 'Persons may be impaired for many reasons, but it is always and only an ableist society that renders these persons disabled. By limiting, diminishing and negating potential, the ableist society disables a proportion of the individuals therein, the result of which is damaging to the whole.'²⁷⁹ Whilst he is correct that societal attitudes play a role in the concept of disability, this thesis takes the view that individual feelings about impairment cannot be divorced from disability to make society entirely responsible, as Bolt suggests.

²⁷³ L. Barton, *Sociology, Disability Studies and Education: Some Observations*. in T. Shakespeare (ed), *The Disability Reader Social Sciences Perspectives* (Continuum 1998) 61

²⁷⁴ *Ibid.* 64

²⁷⁵ K. Lynch, *Lessons for higher education: the university as a site of activism*. in M. Arnot (ed), *The Sociology of Disability and Inclusive Education: A Tribute to Len Barton* (Routledge 2012) 58

²⁷⁶ *Ibid.* 59

²⁷⁷ D. Bolt, 'Disability and the Rhetoric of Inclusive Higher Education' [2004] 28(4) *Journal of Further and Higher Education* 357

²⁷⁸ *Ibid.* 355-356

²⁷⁹ *Ibid.* 357

Barnes and Oliver and Germon²⁸⁰ acknowledge that the academy and the DPM need to develop their relationship and form a ‘comprehensive and committed partnership’²⁸¹ to rise to the continual challenges facing people with disabilities in the wake of successive government policies.²⁸² Whilst this thesis argues that this is crucial and acknowledges that the work of the DPM has been fundamental in the development of disability legislation and rights, it argues that neither side should take precedence over the other and that voices should represent the many rather than the few as Corker argues.²⁸³ Any suggestions made in this thesis are mindful of these issues and the need for universities to be aware of them.

Sace²⁸⁴ highlights the need to take a ‘multi-stranded’ approach to anti-discrimination to ensure effective implementation of anti-discrimination measures in practice, which challenge both the manifestations of discrimination and the power relationships that facilitate these.²⁸⁵ She argues for a systematic approach where ‘a group of lawyers tackles one head of the hydra, disability groups lead by example, business organisations promote positive practice, marketers promote complementary messages and so forth.’²⁸⁶ Though this thesis recognises the importance of a systematic approach as advocated by Sace and argues that the introduction of disability discourse into undergraduate legal education has significant potential in ensuring this in practice, by connecting the processes of education and legal sanctions together,²⁸⁷ there are a

²⁸⁰ P Germon, ‘Activists and Academics: Part of the Same or a World Apart?’ in T Shakespeare (ed), *The Disability Reader Social Sciences Perspectives* (Continuum 1998) 248

²⁸¹ C Barnes and M Oliver, ‘Disability studies, disabled people and the struggle for inclusion’ [2010] 31(5) *British Journal of Sociology of Education*. 556

²⁸² *Ibid.*

²⁸³ M Corker, ‘The UK Disability Discrimination Act disabling language, justifying inequitable participation.’ in L Francis and A Silvers (eds), *Americans with Disabilities: Exploring Implications of the Law for Individuals and Institutions* (Routledge 2000) 366-367

²⁸⁴ L Sace, ‘Beyond Good Intentions Making Anti-discrimination Strategies Work’ [2003] 18(5) *Disability & Society* 625–626

²⁸⁵ *Ibid.* 639- 640

²⁸⁶ *Ibid.*

²⁸⁷ *Ibid.* 633

number of points where the arguments of the thesis differ from those of Sace. Sace focuses primarily on the experiences of people living with a diagnosis of mental illness and the experience of stigma.²⁸⁸ Whilst the findings cannot and should not be ignored, it is important to recognise that not everybody living with a disability will identify with or experience stigma. Goffman²⁸⁹ identifies that stigma can be seen as both a cyclical and reciprocal phenomena which is dependent on social context, not solely characteristic and that assuming that people will or do retain certain characteristics throughout their life is stigmatising. This thesis builds its arguments and recommendations on the premise that any approach to incorporating disability discourse into legal education needs to be aware of the possibility of stigma to avoid it, by taking care with labelling, stereotypes, divisive practice and attitudes and loss of status, as highlighted by Sace²⁹⁰; at the same time not making assumptions about the presence of stigma as one way or static traffic as highlighted by Goffman.²⁹¹ Arguably, separating ‘a group of lawyers’ from disability organisations’ is indicative of the issue with closing the gap between intentions and reality that Sace highlights. Persons with disabilities are not viewed as capable to handle the law themselves, but are absent from the dialogue presented to those who are, thus rendering them disempowered. It ignores that legal education for people with disabilities could lead to them working in various areas such as disability groups or in business or as marketeers.²⁹²

It is necessary to establish the link between them and liberal education to demonstrate the value this could bring to future debates. The number of students graduating with a law degree is greater than the number of training contracts available.²⁹³ Consequently

²⁸⁸ *Ibid.* 625-629

²⁸⁹ E Goffman, Selections from Stigma. in LJ Davis (ed), *The Disability Studies Reader* (Routledge 2006)

²⁹⁰ Sace, n. 284. 625-629

²⁹¹ Goffman n. 289. 141-146

²⁹² Sace n. 284. 639-640

²⁹³ “In 2016-17, 25,155 UK students applied to study law at undergraduate level in England and Wales, out of whom 17,855 UK students were accepted on to courses [...] In the year ending 31 July 2016, 5,728 new traineeships were registered with the SRA.” The Law Society, ‘Entry trends’ ([lawsociety.org.uk](http://www.lawsociety.org.uk), 2017) <<https://www.lawsociety.org.uk/Law-careers/Becoming-a-solicitor/Entry-trends/>> accessed 16 October 2017

students could use their knowledge of disability and law to assist with conscious raising at various levels; including assisting the DPM or working in other civil society jobs. For Bradney, the goal of a liberal legal education is to understand the structures and values that permeate and underpin law.²⁹⁴ For people with disabilities, people with disabilities this is central to applying disability rights in practice and calling for change where necessary. These changes could improve citizenship for all. As the population ages they will experience some of the difficulties facing people with disabilities today. Bradney argues that the syllabus should enable students to participate in legal debates regardless of their familiarity.²⁹⁵ The current monotheistic approach to disability within legal discourse, centring on employment,²⁹⁶ fails to provide the pluralism that Bradney deems essential.²⁹⁷ Bradney argues that liberal education does not impose values on students.²⁹⁸ The present approach to disability fails to demonstrate the totality of the legal experiences of people with disabilities automatically dictating a value position on disability without space to question it.²⁹⁹ Additionally, Bradney cautions against seeing legal education as a collection of pet projects for staff rather than coherent mix of subjects,³⁰⁰ which respond to curiosity.³⁰¹ He argues that engagement between students³⁰² should be monitored so they do not simply absorb the views of others unquestioningly.³⁰³

As a researcher with a disability it is important to emphasise the link between arguments made and reason, rather than personal belief or faith in the potential of liberal legal education to assist people with disabilities. The existence of formalised

²⁹⁴ A Bradney, 'Liberalising Legal Education' in F. Cownie, *The Law School – Global Issues, Local Questions* (Ashgate, 1999), 43.

²⁹⁵ *Ibid.*

²⁹⁶ See for example, AM Mooney-Cotter, *This Ability: An International Legal Perspective of Disability Discrimination* (Ashgate Publishing Limited 2007) 7-20

²⁹⁷ Bradney, n. 294.

²⁹⁸ *Ibid.*

²⁹⁹ *Ibid.*

³⁰⁰ *Ibid.* 88-91.

³⁰¹ *Ibid.* 87.

³⁰² *Ibid.*

³⁰³ *Ibid.* 88-89.

legal and political safeguards of rights is demonstrative of public acceptance of them. This provides the reason that Bailey argues is central to critique.³⁰⁴ Though this may be debateable, such a debate is outside the limits of this thesis. Despite this, morals and values hold a significant, if contested place within liberal education. Nussbaum argues plurality is developed by understanding the histories and contributions of all groups within society, particularly those who were previously under-considered,³⁰⁵ which could offer a pedagogic framework for including disability perspectives into English undergraduate legal education. It is important that teaching and awareness should not cross over into indoctrination and activism. Fish argues that activism has no place in the university³⁰⁶ and does not believe that staff disclosure of political position can prevent indoctrination.³⁰⁷ However, if staff do not acknowledge their opinions with students there is a greater risk of indoctrination by omission. Fish argues for embracing a value-free classroom where students can debate ideas based on the value of those ideas in an academic sense rather than presenting their own uninformed opinions.³⁰⁸ Watson highlights the importance of the relationship between students, teachers and the faculty to practice teaching which challenges existing mental models³⁰⁹ to encourage students to think about social change and that leadership is not confined to managerial and hierarchical members of the organisation but that it is a reciprocal sense-making and directional relationship between all members of the faculty.³¹⁰

Scheinin argues that in order to fulfil the goal of the Plan of Action for the UN Decade for Human Rights Education 1995-2004³¹¹ it is necessary for staff to make their

³⁰⁴ C Bailey, *Beyond the Present and the Particular: A Theory of Liberal Education* (Routledge & Kegan Paul plc 1984) 25

³⁰⁵ M Nussbaum, *Cultivating Humanity: A Classical Defence of Reform in Liberal Education* (Harvard University Press 1997) 294-295

³⁰⁶ S Fish, *Save the World on Your Own Time* (Oxford University Press 2012) 22-31

³⁰⁷ *Ibid.* 68-69

³⁰⁸ *Ibid.* 38-39

³⁰⁹ P Watson, 'Leading Change in Legal Education: Interesting Ideas For Interesting Times' [2012] Legal Education Review 213-214

³¹⁰ *Ibid.* 214

³¹¹ Plan of Action for the United Nations Decade for Human Rights Education. Appended to UN Doc. A/51/506/ Add.1, 12 December, para 75(g).

commitments morally to human rights education be visible to engage students in the process of learning and to sensitise them to human rights issues.³¹² This thesis argues that any displays of passion do not indoctrinate students. Therefore, in the context of Human Rights Education, it argues that it is particularly important for staff to be transparent with students concerning their moral positions in order to prevent this from happening particularly in relation to Human Rights Education and the tendency to link it to morality as highlighted by authors such as Scheinin, Rorty and Zembylas.³¹³ Webb argues that value-free teaching is impossible to implement in practice³¹⁴ because hidden values permeate all areas of life.³¹⁵ However, this thesis re-emphasises Bradney's call for value neutrality,³¹⁶ based on choice and respect for individual ethics rather than colluding in Webb's attempt to divorce intellectual understanding from character formation. A person's intellectual understanding of phenomena or issues can influence and shape their character. Webb suggests a number of reforms to place values at the centre of the law school curriculum,³¹⁷ such as acknowledging the importance of prior experience.³¹⁸ This may present difficulties for students with disabilities, as Madriaga³¹⁹ found. Many of those interviewed felt frustration with the way that schools had approached their disability and their previous learning experiences³²⁰ such as patronisation and lack of encouragement to achieve their potential.³²¹ Moreover, Webb's arguments ignore relationships between students and

³¹² M Scheinin, Experiences of teaching Human Rights with Law students and Professional target groups. in S Spiliopoulou Akermark (ed), *Human Rights Education: Achievements and Challenges* (Institute for Human Rights Abo Akademi University 1998) 48-49

³¹³ *Ibid* and R Rorty, Human Rights, Rationality and Sentimentality. in R Rorty (ed), *Truth and Progress: Philosophical Papers Volume 3* (Cambridge University Press 1998) 167-185 and M Zembylas, Emotions, Critical Pedagogy, and Human Rights Education. in M Bajaj (ed), *Human Rights Education: Theory, Research, Praxis* (University of Pennsylvania Press 2017) 74

³¹⁴ J Webb, 'Taking Values Seriously: The Democratic Intellect and the Place of Values in the Law School Curriculum' (Legal Studies Research Paper No. 2009-06 University of Warwick School of Law) 5.

³¹⁵ *Ibid.* 6.

³¹⁶ A Bradney, 'Liberalising Legal Education' in F. Cownie, *The Law School – Global Issues, Local Questions* (Ashgate, 1999), 88

³¹⁷ Webb, n. 314 23-7.

³¹⁸ *Ibid.* 23.

³¹⁹ M Madriaga, 'Enduring Disablism: Students with Dyslexia and their Pathways into UK Higher Education and Beyond' [2007] 22(4) *Disability and Society* 402

³²⁰ *Ibid.*

³²¹ *Ibid.*

tutors and the possibility of over influence.³²² If a student has particular regard for a lecturer this may cloud their ability to see past didacticisms and formulate their own opinions. Consequently, Webb's call for debate³²³ could curtail junior students' ability to question arguments that they are presented with, if the moral position of the tutor is perceived as being the 'right way.' Students do not always begin their university careers as confident and questioning thinkers. A thorough value education allows students to formulate their values and ideas so that students will be able to defend these values from challenges which may fundamentally change their belief or motivation.³²⁴

Oakeshott argues that self-understanding provides depth to the process of learning, preventing students simply from becoming cultural philistines.³²⁵ This is an important element to consider when discussing the boundaries and potential of liberal education to produce change because it is necessary to consider that even a liberal education will not automatically render students socially minded.³²⁶ Oakeshott cautions against instituting a superficial approach to liberal education by cramming the curriculum so full so as only to be able to offer students fleeting engagement with particular aspects, which is a risk of the superficial understanding of liberal education in the legal context as recognised by Cownie, Webb and Hepple.³²⁷ This importance of public engagement and accountability,³²⁸ and meritocratic³²⁹ recruitment of both staff and students

³²² Webb n. 314 19-21.

³²³ *Ibid.* 22.

³²⁴ *Ibid.*

³²⁵ M Oakeshott, in A O'Hear and M Sidwell (eds), *The Social Freedom: A Liberal Education Reader from Plato to the Present Day* (Imprint Academic 2009) 215

³²⁶ G Ferris, 'Values ethics and legal ethics: the QLD and LETR Recommendations 6, 7, 10, and 11' [2014] 48(1) *The Law Teacher* 25, 29

³²⁷ See for example F Cownie, 'Alternative values in legal education' [2003] 6(2) *Legal Ethics* 159-161, F Cownie, *Legal academics : culture and identities* (Hart 2004) 30-35, A Bradney, *Conversations, Choices and Chances: The Liberal Law School in the Twenty-First Century* (Hart, 2003) 31-34, B Hepple, 'The Renewal of the Liberal Law Degree' [1996] 55(3) *Cambridge Law Journal* 471-477, C Stolker, *Rethinking the Law School: Education, Research, Outreach and Governance* (Cambridge University Press, 2014) 130-135 and 137-141.

³²⁸ See Solutions chapter, 'Participation'

³²⁹ JH Newman, *The Idea of a University* (CreateSpace Independent Publishing Platform c2016) 15-16

presents difficulties for the traditional liberal educational idea of seclusion from the wider world.³³⁰ Oakeshott questions how conversational rather than formulaic learning will continue in to the face of greater regulation by professional bodies.³³¹ Fullan argues that social change must be holistic and driven by collective enquiry and continuous renewal.³³² These environmental factors must frame any introduction of disability discourse into the liberal legal undergraduate curriculum.

Cownie advocates for the inclusion of values and morality in a liberal legal education in order to produce both citizens and lawyers who can engage in moral debate.³³³ She highlights that educators are likely to face difficulties in navigating a curriculum that deals with issues of morality and values, highlighting the importance of ensuring that legal academics receive the necessary training to enable them to engage students confidently.³³⁴ She advocates Nussbaum's approach for abandoning technocentric education.³³⁵ Nussbaum's focus on interpretation makes liberal legal education applicable in this thesis by bridging the gap between the extremes of value neutrality advocated by Fish³³⁶ and the indoctrinated value positions advocated by O'hear,³³⁷ by focusing on the conversational aspects of liberal education championed by Oakeshott³³⁸, Mill³³⁹ and Bradney.³⁴⁰

Burridge and Webb³⁴¹ argue that the link between liberal education and moral education is problematic.³⁴² Emphasis on moral neutrality could lead to a gentrified

³³⁰ *Ibid.* 27-33

³³¹ Oakeshott, n. 325 227

³³² M Fullan, *Change Forces: Probing the Depths of Educational Reform* (Falmer Press, 1993) viii in P Watson, 'Leading Change in Legal Education: Interesting ideas for Interesting Times' [2012] *Legal Education Review* 214-215

³³³ F Cownie, 'Alternative Values in Legal Education' [2003] 6(2) *Legal Ethics* 172

³³⁴ *Ibid.* 173

³³⁵ *Ibid.* 173-174

³³⁶ Fish n. 306

³³⁷ O'Hear n. 240. 232

³³⁸ Oakeshott n. 325

³³⁹ Mill, n. 250

³⁴⁰ Bradney, n. 316

³⁴¹ R Burridge and J Webb, 'The Values of Common Law Legal Education: Rethinking rules, responsibilities, relationships and roles in the Law School' [2007] 10(1) *Legal Ethics* 72-73.

³⁴² *Ibid.* 77.

conception of learning that fails to push students to strive for change by creating a specific conception of good to aim for.³⁴³ They argue that liberal education is lacking in context and that consequently, it fails to address issues of balance between tolerance, beneficence and self-interest in achieving social goals.³⁴⁴ In response, they argue this leads to elitism rather than inclusivity and ignores the importance of the 'knowledge economy'.³⁴⁵ Widening participation in modern university education renders the charge of elitism questionable.³⁴⁶ Additionally, increased participation challenges the idea of a lack of context because today's students are not solely drawn from those who attended the cosseted, cyclical world of public schools and ancient universities.³⁴⁷

Previous Studies

An internet search for 'UK Law Schools Disability Module' returned results from the University of Leeds³⁴⁸ and the University of Westminster.³⁴⁹ Based on an examination of the content of LLB programmes at 78 English Institutions in the 2018 Complete University Guide Law Table, as an independent guide, 22 institutions covered Disability or Discrimination within their Employment modules,³⁵⁰ 5 institutions

³⁴³ *Ibid.* 77-79.

³⁴⁴ *Ibid.* 79-80.

³⁴⁵ *Ibid.* 80.

³⁴⁶ Though there still remains a noticeable gap in the number of students attending university from state schools compared with those from independent schools, statistics for July 2015 indicate an upward trend in the university participation of students in receipt of free school meals as well as those from other state institutions to the most selective HE and FE colleges. See Department for business innovation and skills, " (Widening participation in higher education). <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/443986/Widen-Partic-HE-2015s.pdf> accessed 13 November 2015 Tables 1, 2, 3a and 3b.

³⁴⁷ See Newman's use of 'gentlemen' as a proper noun in JH Newman, *The Idea of a University* (CreateSpace Independent Publishing Platform c2016) 1,3,7,8,19 etc. See 'gentleman' in Webster, Webster's Reference Library Concise Edition Dictionary and Thesaurus (Geddes & Grosset 2002) 139 which defines gentleman as 'a man of good family and social standing; a courteous, gracious and honourable man...'

³⁴⁸ University of Leeds School of Law, 'LLB Law' ([law.leeds.ac.uk](http://www.law.leeds.ac.uk), 2017)

<<http://www.law.leeds.ac.uk/undergraduates/llb-law/>> accessed 19 June 2017

³⁴⁹ University of Westminster, 'Law School' ([Westminster.ac.uk](http://www.westminster.ac.uk), 2017)

<<https://www.westminster.ac.uk/about-us/our-people/directory/bunbury-stephen>> accessed 19 June 2017

³⁵⁰ University of Cambridge, 'Labour Law Tripos 2017-18: Sarah Fraser-Butlin' (*Law*, 2017-06-14) <<https://sms.cam.ac.uk/media/2498197>> accessed 26 March 2018, University of Oxford, 'Options and Core Courses' (*Faculty of Law*, 26 March

offered specific Anti-discrimination or Equality modules but disability content was not clear from all websites: Kings College London,³⁵¹ Sussex,³⁵² Oxford Brookes,³⁵³

2018)<<https://www.law.ox.ac.uk/admissions/options>> accessed 26 March 2018, London School of Economic, 'LL257 Labour Law' (*Calendar*, 2017/18 session)<http://www.lse.ac.uk/resources/calendar/courseGuides/LL/2017_LL257.htm> accessed 26 March 2018, University of Kent, 'Law - LLB (Hons)' (*Undergraduate Courses 2019*, 26 March 2018)<<https://www.kent.ac.uk/courses/undergraduate/177/law#structure>> accessed 26 March 2018, University of Exeter, 'Law LLB' (*Undergraduate Study 2019 Courses*, 26 March 2018)<<http://www.exeter.ac.uk/undergraduate/degrees/law/law/#Programme-structure>> accessed 26 March 2018, University of Birmingham, 'LLB Law' (*Undergraduate Courses*, 26 March 2018)<<https://www.birmingham.ac.uk/undergraduate/courses/law/law-llb.aspx#CourseDetailsTab>> accessed 26 March 2018, University of Leicester, 'Employment Law' (*Modules*, 26 March 2018) <<https://le.ac.uk/modules/lw3230>>accessed 26 March 2018, University of Sheffield, 'LAW334 Employment Law' (*Programme Regulations Finder*, 26 March 2018)<<https://www.sheffield.ac.uk/programmeregulationsfinder/unit?code=LAW334&org=SHEFFIELD&start=29-Sep-1997&loc=SHEFFIELD&cal=SPR%20SEM&year=2017>> accessed 26 March 2018, University of Sussex, 'Law LLB (Hons)' (*Study with us*, Copyright © 2018)<<http://www.sussex.ac.uk/study/undergraduate/courses/law/law-llb>> accessed 26 March 2018, University of Manchester, 'LLB Law / Course details' (*Undergraduate Courses*, 26 March 2018)<<http://www.manchester.ac.uk/study/undergraduate/courses/2018/09672/llb-law/course-details/LAWS30272#course-unit-details>> accessed 26 March 2018, University of Southampton, 'LAWS2026 Employment Law' (*Courses*, © 2018)<<https://www.southampton.ac.uk/courses/modules/laws2026.page>> accessed 26 March 2018, University of Surrey, 'Employment Law II - 2019/0' (*Course Catalogue 19/0*, 26 March 2018)<https://catalogue.surrey.ac.uk/2019-0/module/LAW3076?_ga=2.198459238.895701749.1521211905-1844826603.1521211905> accessed 26 March 2018, University of Lincoln, 'The Course' (*LLB Law Hons*, 26 March 2018)<<http://www.lincoln.ac.uk/home/course/lawlawub/>> accessed 26 March 2018, De Montfort University, 'Employment Law' (*Courses*, © 2018) <<http://www.dmu.ac.uk/study/business-and-law/undergraduate-modules/third-year/employment-law.aspx>> accessed 26 March 2018, University of Northumbria Newcastle, 'Module Overview' (*Law LLB (Hons)*), © Copyright 2018)<<https://www.northumbria.ac.uk/study-at-northumbria/courses/law-llb-hons-uuslwz1/>> accessed 26 March 2018, Middlesex University London, 'Modules' (*LLB Law*, 26 March 2018)<<http://www.mdx.ac.uk/courses/undergraduate/llb>> accessed 26 March 2018, Kingston University London, 'Year 3 Optional Module Employment Law' (*Law LLB(Hons) with professional experience*, 26 March 2018) <<http://www.kingston.ac.uk/undergraduate-course/law-llb/>> accessed 26 March 2018, Anglia Ruskin University, 'Law LLB (Hons)' (*Anglia Ruskin University*, 2017)<<https://www.anglia.ac.uk/study/undergraduate/law>> accessed 26 March 2018, London Metropolitan University, 'Employment and Equality Law' (*LLB Law - (Hons)*, 26 March 2018)<<http://www.londonmet.ac.uk/courses/undergraduate/llb-law---hons/>> accessed 26 March 2018, University of Bristol, 'Unit information: Employment Law in 2019/20' (*Unit and Programme Catalogues*, © 2002-2016) <<https://www.bris.ac.uk/unit-programme-catalogue/UnitDetails.jsa?ayrCode=19%2F20&unitCode=LAWD30113>> accessed 27 March 2018

³⁵¹ Kings College London, 'LLB Law' (*Law*, October 2017)<<https://www.kcl.ac.uk/study/assets/PDF/cma/undergraduate/Law-LLB.pdf>> accessed 26 March 2018

³⁵² University of Sussex, 'Justice, Equality and Society' (*Law LLB (Hons)*, © 2018)<<http://www.sussex.ac.uk/study/undergraduate/courses/law/law-llb>> accessed 26 March 2018

³⁵³ Oxford Brookes university, 'Module Descriptions for Law' (*Courses*, © 2018)<<https://www.brookes.ac.uk/studying-at-brookes/courses/undergraduate/supporting-materials/module-descriptions-for-law/>> accessed 26 March 2018

Southampton Solent³⁵⁴ and Northampton,³⁵⁵ and 51 institutions gave no indication of coverage on their websites (numbers correct as of 17:16 on 16/3/18).³⁵⁶

A common theme of American literature is that of suspicion from faculty members that students will utilise reasonable adjustments³⁵⁷ to gain advantage over other students.³⁵⁸ These attitudes are demonstrated clearly in Smith's work through his use of language. This thesis will challenge this approach by taking an interactionist approach to disability, which appears to bridge the divide between the social and medical models, by stating that disability has different routes at different times and whilst changes in social attitudes or behavior can ameliorate it, it is important not to neglect or minimise the effect of an individual's relationship with their impairment and how they feel about it.³⁵⁹ Smith's use of the phrases: 'The understandable and laudable desire of law schools to comply with federal laws and regulations[...]'³⁶⁰ indicates a charity approach to disability, that increased access is logical and that those who facilitate it should be praised. 'Understandable'³⁶¹ and 'laudable',³⁶² suggest that increased access for persons with disability is something that should logically happen and that those who facilitate it deserve commendation. The link with access and

³⁵⁴ Southampton Solent University, 'What You'll Study' (*LLB Law - (Hons)*, 26 March 2018) <<https://www.solent.ac.uk/courses/undergraduate/llb-hons>> accessed 26 March 2018

³⁵⁵ University of Northampton, 'Discrimination Law' (*Law LLB (Hons)*, c 2018) <<https://www.northampton.ac.uk/study/courses/law-llb-hons/>> accessed 26 March 2018

³⁵⁶ The Complete University Guide, 'University Subject Table Law' (thecompleteuniversityguide.co.uk, 24 May 2017) <<https://www.thecompleteuniversityguide.co.uk/league-tables/rankings?s=law>> accessed 16 March 2018

³⁵⁷ See for a further example, S Adams, 'Classroom Accommodations for Law Students with Disabilities' [1988] 48(2) *Journal of Legal Education* 295.

³⁵⁸ KH Smith, 'Disabilities, Law Schools, and Law Students: A Proactive and Holistic Approach' [1999] 32(1) *Akron Law Review* 1, A A Aalaei, 'Notes The Americans With Disabilities Act and Law School Accommodations: Test Modifications Despite Anonymity' [2007] *XI(2) Suffolk University Law Review* <http://suffolklawreview.org/wp-content/uploads/2007/03/Aalaei_Note_FINAL.pdf> accessed 2 June 2017 436, DH Stone, 'What Law Schools Are Doing to Accommodate Students with Learning Disabilities' [2000] 42(19) *S Tex L Rev* 19-57 and S Halpern, 'On the Politics and Pathology of Legal Education (Or, Whatever Happened to that Blindfolded Lady with the Scales?)' [1982] 32 *Journal of Legal Education* 383-396.

³⁵⁹ T Shakespeare, *Disability Rights and Wrongs* (1st, Routledge, Oxon 2006)

³⁵⁹ *Ibid.* 15-19.

³⁶⁰ KH Smith, 'Disabilities, Law Schools, And Law Students: A Proactive And Holistic Approach' [1999] 32(1) *Akron Law Review* 1

³⁶¹ OED 3 edition 2010 'Able to be understood; to be expected; natural; reasonable, or forgivable'

³⁶² OED 3 edition 2010 '(of an action, idea, or aim) deserving praise and commendation.'

personal commendation for persons without disability minimises their position as equal rights holders rather than objects of charity. This thesis argues that incorporating a sense of proactive critical citizenship around disability challenges these attitudes and drives, rather than waits for change

Perlin³⁶³ argues that providing sporadic coverage of the needs of people with disabilities means that they remain hidden within the academy regardless of their interaction with the law in practice.³⁶⁴ The current project builds upon Perlin's approach by considering it in relation to a wide-range of disabilities and their interactions with the law to affirm his assertion that the relationship between disability and the law should take a position amongst human rights law teaching in universities rather than being hidden away as a niche interest subject for the few rather than the many. It is asserted that this can only be achieved with constructive relationships between faculty members and the faculty and the university to ensure that students are given the fullest possible picture and understanding of why this matters. DelPo Kulow³⁶⁵ considered the cursory treatment of disability discrimination law in American employment law teaching. He argues that it is 'desirable to include a class with hands-on experiences for students to begin to experience the line drawing required by the ADA's definition driven language.'³⁶⁶ He achieves this regularly updated, small group teaching exercises, mirroring changes in the curriculum. Paetzold³⁶⁷ argues that it is necessary to develop the teaching of disability discrimination law so that students have greater understanding of its practical implication and application.³⁶⁸ This involves including a variety of reading from a range of sources to assist students in

³⁶³ ML Perlin, 'They Keep it All Hid': The Ghettoization of Mental Disability Law and its Implications for Legal Education' [2010] 54(3) St Louis University Law Journal Symposium Issue

³⁶⁴ *Ibid.* 876

³⁶⁵ M DelPo Kulow, 'Teaching Disability Employment Discrimination Law: Accommodating Physical and Mental Disabilities' [Summer/Fall 2012] 29(2) Journal of Legal Studies Education 335–362

³⁶⁶ *Ibid.* 357

³⁶⁷RL Paetzold, 'Why Incorporate Disability Studies into Teaching Discrimination Law?' [Winter/Spring 2010] 27(1) Journal of Legal Studies Education 61–80

³⁶⁸ *Ibid.*

contextualising the genesis of legislation and cases. It is hoped that this will highlight the strengths and weaknesses and possible changes needed to the legislation to correspond with a social understanding of disability. She argues that critical discussions of the social model are needed to achieve this.³⁶⁹ This approach provides a framework for the development of the present project. Subsequently, this thesis questions the utility and role of Disability Studies in this context. Like Finkelstien,³⁷⁰ Kanter explores the integration of disability into legal education from a Disability Studies perspective. She takes a social modelist view that bringing this perspective into legal education can move people with disabilities from being viewed as patients or recipients of charity to members of society who are excluded by society's failure to remove the barriers that it has created.³⁷¹ She cites that Disability Studies differs from other ways of researching disability by centralising the experiences of people with disabilities within the research and treating them, rather than health professionals, as the experts on disability.³⁷²

Disappointingly, Kanter appears to maintain the view that the inclusion of disability perspectives into law schools is a matter of empowerment of people with disabilities but rather, an intellectual exercise for lawyer applying their perspective to benefit people with disabilities which seems removed from her claim about emancipatory research. Kanter's assertion that 'disability is us'³⁷³ is uncomfortable and challenged by this thesis. The implication of disability being 'us' means that there must be a 'them'. In the case of Kanter's argument, the 'us' is people who are not currently living with disability but who she believes will at some point because old age and changes in health status will mean that they are likely to experience disability at some point.³⁷⁴ 'Them'

³⁶⁹ *Ibid.* 78

³⁷⁰ Finkelstein, n. 267

³⁷¹ AS Kanter, The Relationship between Disability Studies and Law. in AS Kanter and B Ferri (eds), *Righting Educational Wrongs: Disability Studies in Law and Education* (Syracuse University Press 2013) 1-2

³⁷² *Ibid.* 3-5

³⁷³ *Ibid.* 27

³⁷⁴ *Ibid.* 28

are by implication, those who are already living with disability. This collocation is indicative of power relationships as the idiom ‘Them and us’ is defined as ‘two groups of people believe they are very different from each other and do not like each other, often because one group has more power than the other.’³⁷⁵ Kanter justifies the inclusion of disability discourse into legal education on the basis that it will serve the future needs of the dominant group. She highlights that certain members of the faculty may view the presence of students with disabilities as an unwelcome challenge to their teaching methods and that as such the inclusion of students with disabilities into our classroom may challenge both the concept and constituency of disability.³⁷⁶ However, Kanter makes a strong argument for the inclusion of disability into the legal curriculum due to the fact that it crosses over certain boundaries of intersectionality such as race and gender and as a consequence of this it remains absent from a number of discussions as a specific area of concern because other minority characteristics tend to receive greater attention.

Whilst this research argues that the fact that disability is experienced by several people is not a reason to include it into the curriculum on its own, the fact that it crosses so many other characteristic ‘lines’ means that discussions of intersectionality can take place and alert students to the plurality of experiences of disability and that forms of discrimination rarely occur in isolation within society.³⁷⁷ Another strong element of Kanter’s argument is that discussions of the legal and social responses to people with disabilities is indicative of the role of governments in protecting the welfare of all citizens and provides a useful vehicle to engage in discussions about rights and responsibility.³⁷⁸ Kanter’s decision to use disability as a lens for justifying its inclusion

³⁷⁵Cambridge University Press Cambridge Dictionary, 'them and us' (*dictionary.cambridge.org*, 2018) <<https://dictionary.cambridge.org/dictionary/english/them-and-us>> accessed 22 March 2018

³⁷⁶ Kanter n. 371. 28

³⁷⁷ D Schiek, 'Intersectionality and the Notion of Disability in EU Discrimination Law' [2016] 53(1) Common Market Law Review 62

³⁷⁸ Kanter n. 371. 35

into the curriculum rather than considering it at the experience level is patronising, rather than empowering.³⁷⁹ It is predicated on exclusion being seen as interesting to the dominant group, rather than a response to exclusion. This thesis challenges this perspective by arguing that disability exclusion and doctrinal critique of the framework designed to prevent it, is a legitimate topic of study³⁸⁰ in its own right and explores how this could increase legal consciousness about disability as a phenomena in contemporary society, rather than a future state.

Linton argues for integrating disability perspectives across the curriculum to reflect society emerging as a result of changes such as the Independent Living Movement, to create citizens equipped to engage with this society.³⁸¹ She argues for what she calls Disability Studies/Not Disability Studies,³⁸² to remove focus from medicine,³⁸³ rehabilitation etc. to the Liberal Arts³⁸⁴ Disability issues could be examined in relation to specific areas of study such as Land Law, Criminal Law, Family Law or Tort Law rather than Disability as a concept or a part of identity and the social response to it. She emphasises the importance of leadership by people with disabilities within the curriculum and the importance of collaboration amongst all groups of people in society and DPOs as a way of advancing the goal of integration through the curriculum.³⁸⁵

Mor argues that law as a system operates to construct and maintain certain viewpoints, perspectives and power relationships concerning the rights of people with disabilities.³⁸⁶ She argues that investigation into the relationship between law and

³⁷⁹ *Ibid.* 36-37

³⁸⁰ M Corker, The UK Disability Discrimination Act disabling language, justifying inequitable participation. in L Francis and A Silvers (eds), *Americans with Disabilities: Exploring Implications of the Law for Individuals and Institutions* (Routledge 2000) 364-365 and M Corker, *Deaf and Disabled or Deafness Disabled?* (Open University Press 1997) 115-11

³⁸¹ S Linton, *Claiming Disability: Knowledge and Identity* (New York University Press 1998).72

³⁸² *Ibid.* 132

³⁸³ *Ibid.* 137

³⁸⁴ *Ibid.* 76-92, 125-130

³⁸⁵ *Ibid.* 146

³⁸⁶ S Mor, 'Imagining the Law - The Construction of Disability in the Domains of Rights and Welfare: The Case of Israeli Disability Policy' (J.S.D. Thesis, NYU School of Law November 2005) 30-35

disability could enhance research on issues such as citizenship, autonomy and identity, group formation and intersectionality. This thesis mirrors these ideas, as it argues that undergraduate liberal legal education is a fertile site for examination. Mor argues for moving legal perspective on disability away from interpretation and implementation towards an understanding of law's role in marginalising and excluding people with disabilities.³⁸⁷ Therefore, students need to understand how law can help to create maintain meanings and hierarchies, through regulating interactions through the judicial system and litigation.³⁸⁸ However, this thesis critiques Mor's praise of Disability Legal Studies because it creates further divisions and risks colonising ideas. It is incompatible with the ideas of a liberal education and liberal society because although people can contribute their own ideas about these areas, it reinforces false social constructs. Despite this, Mor champions Linton's³⁸⁹ integrationist approach towards disability studies. This approach removes the connotation of academic 'butterfly hunting' where academics build their careers in underexplored areas of law as a means to achieving recognition and status. This puts people in a position of power over the people that the area actually relates to because their viewpoint becomes dominant and if we don't make it so more people can engage with that area then new ideas aren't going to formulate and move things forward. It disempowers and stunts progression and involvement because people with disabilities are 'represented' on the world stage, rather than presenting themselves. Lastly, in maintaining a focus of welfare, it is arguable that Mor continues to place people with disabilities in the position of resource recipients who are dependent upon society seeing their claims as worthy and her focus on the relationship and law production and disability further compounds these stereotypes rather than empowering people with disabilities. This is compounded through her use of language such as 'struggle' and 'resistance'. Conversely, this thesis argues that examining the relationships between disability law and legal education is a

³⁸⁷ *Ibid.* 33-34

³⁸⁸ *Ibid.* and 34-35

³⁸⁹ S Linton n.381.

means of empowering people with disabilities to take ownership of the ideas surrounding disability and to develop a relationship with disability legislation which helps to advance disability rights in practice through the creation of Proactive Critical Citizenship. Education is central to the legal human rights framework and its advancement however, there is little research joining these aspects together.

Bagileri and Ware consider intergrating 'disability studies' into the humanities curriculum.³⁹⁰ They advocate focusing on the 'idea of the human.'³⁹¹ Whilst this thesis builds on similar understanding and goals in the solutions chapter it is not possible to make direct transpositions between the differences in the American and English curriculum and academic culture regarding time and course structure.³⁹² Ware's suggestion to consider sources such as literature and history³⁹³ as well as legal developments would be useful and enriching, but not possible to consider in the English context in depth. Dark³⁹⁴ considers the value of incorporating issues of race, gender, class, sexual orientation and disability into law school teaching along with issues that may arise and how these may be overcome. This is applicable to the English context. The first argument that Dark makes is that including these diversity issues into legal education can improve the understanding of law and traditional legal analysis because they can assist in highlighting the limits of the law and highlighting how legal doctrine itself can override the purpose or goal of particular laws.³⁹⁵ Dark argues that it can improve the integration of legal skills with other elements of problem solving arguing that enabling students to incorporate their own perspectives, experience and other means of solving problems into the legal process will make them more effective

³⁹⁰ S Bagileri and L Ware, Ending the Longing for Belonging Teaching Disability Studies in the College Core Curriculum. in A Kanter and B Ferri (eds), *Righting Educational Wrongs: Disability Studies in Law and Education* (Syracuse University Press 2013)

³⁹¹ *Ibid.* 106

³⁹² *Ibid.* 106-107

³⁹³ Bagileri and Ware n. 390. 109-124

³⁹⁴ OC Dark, 'Incorporating Issues of Race, Gender, Class, Sexual Orientation, and Disability into Law School teaching' [1996] 32(3) *Willamette Law Review* 541-575

³⁹⁵ *Ibid.* 544

as advocates.³⁹⁶ Though she highlights that some students who use themselves as reference points can be chided by the legal faculty for being subjective and without authority,³⁹⁷ she argues that there are a number of problems being brought to the legal system that are increasingly difficult to resolve within the judicial system with traditional legal tools. An awareness of diversity may help them to build a bridge between these two elements.³⁹⁸ This thesis concurs with these arguments but focuses on the importance of self-empowerment as a means of highlighting and challenging the point at which formal legal structures and doctrines fail to address the needs of those participating in the justice system and the potential of this to bring about change in the future. This links with Dark's argument that such an approach to legal education would render its participants better advocates although the difference between the British focus on liberalism over the American focus on vocationalism means that in the context of the present research it may be better to rephrase this as self-advocacy. Dark argues that the inclusion of diversity into legal education could help to prepare students for a diverse society moving forward.³⁹⁹ She argues that this will help them to become better listeners able to understand their perspective.⁴⁰⁰ Whilst this is a positive argument and supports those made in the present research, integrating diversity issues around disability in the English context must always consider that whilst education may give students an insight into issues, their view will always be different to the person directly experiencing the reality of living with a particular characteristic in context, when they may share that context. Dark argues that this can be beneficial is that it can encourage a multidisciplinary approach to problem solving for students.⁴⁰¹ This can encourage them to use other forms of research and sources of information to inform their legal analysis and response teaching them to look beyond textbooks and case

³⁹⁶ *Ibid.* 551

³⁹⁷ *Ibid.*

³⁹⁸ *Ibid.* 552

³⁹⁹ *Ibid.* 553

⁴⁰⁰ *Ibid.* 554

⁴⁰¹ *Ibid.* 555

books and to explore other vehicles for resolving issues.⁴⁰² Dark argues that the discussion of diversity issues in legal education facilitate an understanding that values matter and makes the argument that legal cases reflect an element of resolution of competing interests and values.⁴⁰³ She argues that diversity issues force a consideration of what society values and that a student undertakes a 'self-actualisation process' when engaging with these issues preventing them from returning to a prior state of ignorance about issues and to understand that the law provides the answers to questions in this context.⁴⁰⁴ Whilst this is a strong argument, it should be considered that merely highlighting the existence of values and value struggles to students or society in general for that matter, will not automatically change them or their outlook. It is this element of the argument in relation to the incorporation of diversity issues into legal education as a means of automatically changing values and attitudes within society generally rather than focusing on people with disabilities which falls flat because this continues to collocate discussions of disability and other perceived social vulnerabilities within the legislative context as some form of moralistic endeavour or virtue which will always maintain an element of patronisation of people with disabilities. This weakness continues in Dark's argument that incorporating diversity matters into legal education will automatically result in a shared obligation for seeking justice in society. Whilst social change may be dependent on majority involvement, assuming that it can or should be inculcated within students without their cooperation, consent or desire for it risks stepping over the line from revelation of particular social issues to indoctrination of a particular moral standpoint. Though Dark acknowledges that people do not all share the same vision, the acknowledgement of vision itself and its impact on the behaviour of lawyers is important.⁴⁰⁵ However, this automatically

⁴⁰² *Ibid.*

⁴⁰³ *Ibid.* 556

⁴⁰⁴ *Ibid.*

⁴⁰⁵ *Ibid.* 557

assumes that for everybody with a career or involvement in the law there must have an objective over and above material gains, which is not always the case.

In terms of physical barriers facing students with disabilities O'Connor and Robinson⁴⁰⁶ argue that universities need to take a holistic sustainable approach which is rather than one off initiatives to address issues, driven by watchdogs or charities.⁴⁰⁷ They highlight that continued focus on cost effectiveness in terms of access, can adversely affect student experience. Responsive policies result from involving people with disabilities rather than relying on experts.⁴⁰⁸ Fuller et al⁴⁰⁹ highlighted barriers facing students with disabilities at all stages of learning, from processing aural information in lectures, reading and writing at the necessary speed in seminars, examinations⁴¹⁰ and oral presentations,⁴¹¹ and difficulty with information sharing between disability services and lecturers⁴¹². Tinklin et al acknowledged the effect of a disconnect between the intention and goal of diversity policies and their implementation. Several authors identify difficulties facing students in accepting or appropriating the label of a particular impairment or disability to enable them to access support for their studies.⁴¹³ Another commonality across the literature was students' feeling that staff misunderstood their disability or impairments, or that they would be accused of claiming reasonable adjustments as a means of gaining an unfair advantage.⁴¹⁴

⁴⁰⁶ U O'Connor & A Robinson, 'Accession or Exclusion? University and the Disabled Student: A Case Study of Policy and Practice' [1999] 53 Higher Education Quarterly 88-103

⁴⁰⁷ *Ibid.* 91

⁴⁰⁸ *Ibid.*

⁴⁰⁹ M Fuller and others 'Barriers to learning: a systematic study of the experience of disabled students in one university' [2004] 29:3 Studies in Higher Education 303-318

⁴¹⁰ *Ibid.* 312-313

⁴¹¹ *Ibid.* 308-310

⁴¹² *Ibid.* 313

⁴¹³ T Tinklin, S Riddell, A Wilson, 'Disabled Students in Higher Education' [2004] CES Briefing No. 32 1 and O Konur, 'Teaching disabled students in higher education' [2006] Teaching in Higher Education 351-363

⁴¹⁴ M Madriaga, 'Enduring Disablism: Students with Dyslexia and their Pathways into UK Higher Education and Beyond' [2007] 22(4) Disability and Society 405 and M Onnely and K Brocklemann, 'Out of the Disability Closet: strategic use of perception management by select university students with disabilities' Disability and Society [2003] 12

Conclusion

This thesis aims to bridge the gaps in the current literature by contextualising the importance of education within the human rights framework concerning disability at all levels. It will make a case for this to be included in legal education to achieve increased legal consciousness amongst people with disabilities and society generally. It will bridge the gaps by considering how to achieve this in practice in terms of pedagogy and course content and it will move the focus from vocational education to liberal education to ensure that knowledge reaches the widest number of people possible and that it accurately represents current entry trends for the legal profession. It will innovate the current literature by creating a space for proactive critical citizenship which will enable students, society and people with disabilities to critique the existing framework concerning rights for people with disabilities to identify both strengths and weaknesses in order that people can advocate for change where necessary and take ownership over their rights. The following chapter explains the theoretical lens and methodology which will frame the analysis in proceeding chapters.

Chapter 2: Theoretical Framework

This chapter sets out the theoretical framework and perspective of this thesis in response to the issues identified during the literature review. The framework blends critical theories such as Critical Pedagogy espoused by Paulo Freire,¹ Critical Legal Theory as explored by Kennedy² and Unger³ and Critical Disability Theory by Devlin and Pothier.⁴ These set both the content and limits of a curriculum to enable students to explore and challenge accepted legal and social norms to highlight and address the role that these have and continue to play in the advancement of human rights within society generally. This gives students the skills and perspective necessary to become Proactive Critical Citizens through increased critical consciousness. Critical Theory's recognition of the need not to simply replicate one set of unsatisfactory ideas with another provides limitation and internal critique, which it is hoped would protect any suggestions from overreaching idealism in practice.

Critical Theory

Critical Theory's genesis within the social and political upheaval of the Second World War⁵ and the failure of Marxist theory to respond to issues outside the original ideas and consider the potential action and consciousness of individuals⁶⁷ makes it suitable for the critique and assessment of the impact of established social structures and processes in creating and maintaining relationships even when the utility of those

¹ P Freire, *Pedagogy of the Oppressed: 30th Anniversary Edition* (Continum 2000)

² Kennedy D, Legal Education and the Reproduction of Hierarchy: A Polemic against the System. in Kennedy D (ed), *Legal Education and the Reproduction of Hierarchy: A Polemic against the System* (New York University Press 2004) and Kennedy D, 'Legal Education and the Reproduction of Hierarchy' [1982] *Journal of Legal Education*

³ Unger RM, *The Critical Legal Studies Movement: Another time, A Greater Task* (3rd edn, Verso 2015)

⁴ D Pothier and R Devlin (eds), *Critical Disability Theory: Essays in Philosophy, Politics, Policy, and Law* (UBC Press 2006)

⁵ D Held, *Introduction to Critical Theory: Horkheimer to Habermas* (Hutchinson & Co 1980) 16-19

⁶ *Ibid.* 20

⁷ *Ibid.*

relationships is questionable.⁸ Lukács argues that consciousness of social position and challenging the social order relies on gaps between actual and possible being exposed.⁹ Lukács identifies reification as a means of preventing people from developing this awareness by making social institutions, rules and behaviour appear unchangeable, preventing people from recognising the unjust allocation of resources between groups within society.¹⁰ This project will examine reification of law, legal education, disability and the Human Rights framework, to explore how these have the potential to maintain existing approaches to disability. Honneth¹¹ considers reification as a psychological element within interaction when people fail to recognise the personal characteristics of other people within society and merely begin to see them as things, and a means to an end.¹² This removes context from interactions and prevents people from questioning the potentially negative effects of it. Secondly, Honneth identifies external pressures and influences that arrange society to preserve prejudices or stereotypes to prevent people from recognising that these are created to fulfil a social purpose of maintaining the social order.¹³ This approach is evident in the historical treatment of disability.¹⁴ If Honneth's approach is synthesised with Hedrick's,¹⁵ that reification exists outside of solely economic contexts and that law plays a role in this by presenting information as neutral and depoliticised,¹⁶ arguably the failure of undergraduate legal education to consider discourses around disability is an example of reification. Hedrick builds upon Lukács argument by accounting for reification within individual rather

⁸ *Ibid.*

⁹ G Lukács, *History and Class Consciousness* (MIT Press 1971) and K Korsch, *Marxism and Philosophy* (New Left Books 1970) in D Held, *Introduction to Critical Theory: Horkheimer to Habermas* (Hutchinson & Co 1980) 22

¹⁰ G Lukács, 'History & Class Consciousness' (*Marxists.org*, 1967)

<<https://www.marxists.org/archive/lukacs/works/history/hcc05.htm>> accessed 19 September 2017

¹¹ A Honneth, 'Reification: A Recognition-Theoretical View', *The Tanner Lectures on Human Values* (University of California, Berkeley March 14–16, 2005) <http://tannerlectures.utah.edu/documents/a-to-z/h/Honneth_2006.pdf> accessed 19 September 2017

¹² *Ibid.* 130-131

¹³ *Ibid.* 131-134

¹⁴ See Literature Review 'Disability'

¹⁵ T Hedrick, 'Reification in and through law: Elements of a theory in Marx, Lukács, and Honneth' [2014] 13(2) *European Journal of Political Theory* 178–198

¹⁶ *Ibid.* 193

than society-wide interactions.¹⁷ This enables analysis of the legal approach to disability to encompass the transition between rhetoric and textual analysis of legislation and policy documents to consider the potential effects of intrapersonal translation of these into practice by individuals in continuing, maintaining and in some cases exacerbating weaknesses. However, Jütten¹⁸ criticises Honneth's argument as unworkable, arguing that it is impossible to treat people as things,¹⁹ because this would be a moral injury.²⁰ Transforming reification from the subject of social interactions and commodity exchange to one of morality falls outside of the understanding of the concept as proposed by Lukács and Marx.²¹ Arguably, the legislative history of Britain in relation to people with disabilities and the acceptability of institutionalisation²² is an illustration of Honneth's arguments.

Critical Disability Theory (CDT)

Devlin and Pothier²³ define Critical Disability Theory as a response to 'the binaristic approach to disability [which] engenders a process of "othering" and categorisation, when the more nuanced reality is that disability might be better understood as a systemic and contextualised range.'²⁴ They argue that disability has no essential nature but is socially created.²⁵ This thesis critiques Devlin and Pothier. Firstly, their focus on society over the experience of the individual is disempowering and removes the role of people with disabilities from actioning change. Secondly, this project argues that liberalism's individualistic lens may re-empower people with disabilities against the fatalism of various well-established theories which focus on their disempowerment and the need for specific group membership to advance, though this must be done

¹⁷ *Ibid.*

¹⁸ T Jütten, 'What is Reification? A Critique of Axel Honneth' [2010] 53(3) *Inquiry* 235-256

¹⁹ *Ibid.* 247-248

²⁰ *Ibid.*

²¹ *Ibid.* 248-249

²² See UPIAS discussion, Literature Review

²³ D Pothier & R Devlin, Introduction: Towards a Critical Theory of Dis-Citizenship. in D Pothier and R Devlin (eds), *Critical Disability Theory: Essays in Philosophy, Politics, Policy, and Law* (UBC Press 2006) 2

²⁴ *Ibid.* 5

²⁵ *Ibid.* 5-6

carefully.²⁶ Though they argue that CDT does not want to portray people with disabilities as ‘passive victims’²⁷ citing that there are multilayers of potential resistance to exclusion, from the self to more formalised methods such as politics and law.²⁸ The statement, ‘the biggest challenge comes from mainstream society’s unwillingness to adapt, transform and even abandon its “normal” way of doing things,’²⁹ undermines this rejection of passivity because this contradiction suggests that these avenues of resistance are unlikely to be open to many. This mirrors the difficulties of claims of representation in Disability Studies³⁰ and legislative processes because it conceals the full extent of the issue and misrepresents the effects of progress. Rioux and Valentine³¹ argue though human rights has a role in organising law, policy, advocacy and other arguments for citizenship, these are hampered by its lack of conceptual clarity and the tendency towards paternalistic protection in legal cases, policies and practice.³² CDT’s focus on the lived experiences of people with disabilities rather than being driven solely by the academic movement, is positive. This bridges integrating disability into liberal legal education, by providing space and weight to the reciprocal power between academic discourses and those of lived experience and offers the opportunity to engage with the grey areas between the two, to explore the difference between rhetoric and translation of disability rights into practice.³³ This project modifies the CDT approach to include elements of Shakespeare’s interactionist approach³⁴ to recognise the potential impact of impairment as well as disability on individual experience and interpretation.

²⁶ *Ibid.* 10-11

²⁷ Devlin and Pothier n. 23, p.13

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ See Trömel discussion of CRPD drafting process on 136 and Previous Studies discussion on Literature Review.

³¹ M H Rioux and F Valentine, Does Theory Matter? Exploring the Nexus between Disability, Human Rights, and Public Policy. in D Pothier and R Devlin (eds), *Critical Disability Theory: Essays in Philosophy, Politics, Policy, and Law* (UBC Press 2006)

³² *Ibid.* 47

³³ Pothier and Devlin n. 23. 9.

³⁴ T Shakespeare, *Disability Rights and Wrongs* (1st, Routledge, Oxon 2006). 54-67.

Additionally, Critical Disability Studies (CDS) overcomes the co-option of DPM concepts by academics and other social actors for their own agenda.³⁵ Meekosha and Shuttleworth highlight CDS's requirement for self-reflexivity and the revaluation of emblematic concepts such as participation and autonomy in response to changing contexts, but with a view to what has gone before.³⁶ It is compatible with the interactionist perspective on disability used in the thesis.

Conversely, Vehmas and Watson³⁷ argue that CDS does not engage fully with key ethical and political issues faced by disabled people.³⁸ CDS does not examine how things ought to be for disabled people in terms of right and wrong, good and bad.³⁹ This omission means that CDS cannot provide a strong political or theoretical framework through which to discuss disability. They argue that examination of disability must involve engagement with moral and political issues, and be sensitive to individual experiences as well as external circumstances.⁴⁰ The present project proposes that the elements that Vehmas and Watson highlight as negative, are positive. Although this project does not argue for the creation of separate disability legal studies courses within universities, it is necessary for students to engage with CDS literature. It overcomes the issues identified such as division, as it is felt that this leads to reciprocal exclusion, rather than mutual recognition and respect. Hughes raises concerns about the tendency that he sees in disability studies to ignore ontological aspects of the body, impairment and its relationship to disability.⁴¹ He argues that it fails to see disability as a failure of the dominant narratives of normalcy to

³⁵ H Meekosha and R Shuttleworth, 'What's so 'critical' about critical disability studies?' [2009] 15(1) Australian Journal of Human Rights

³⁶ *Ibid.* 64-65

³⁷ S Vehmas and N Watson, 'Moral wrongs, disadvantages, and disability: a critique of critical disability studies' [2014] 29(4) Disability and Society

³⁸ *Ibid.* 640-642

³⁹ *Ibid.* 642-643

⁴⁰ *Ibid.* 646-648

⁴¹ B Hughes, 'Being disabled: towards a critical social ontology for disability studies' [2007] 22(7) Disability & Society

accommodate difference and to account for disability.⁴² He argues that this keeps non-disabled and disabled people apart, preventing the creation of spaces to explore mutual vulnerability and the concept of autonomy.⁴³ This thesis argues that this can be overcome by incorporating disability discourse throughout the liberal legal curriculum. This enables students and teachers to develop their critique and understanding over time, meaning that they approach more challenging aspects as their knowledge and confidence develops.

Despite analysing discourse the thesis does not use a Foucauldian analysis of either education or disability, due to the focus on embodiment as a state. Not every person experiencing disability or impairment identifies with concepts of embodiment or pathology making Foucauldian theories about disability difficult to apply. Arguably, Foucault's work may indicate how impairment was previously used by the state to regulate social structures and to marginalise what was undesirable,⁴⁴ as evident in the development of hospitals. He explores how timetable and partitioning of classrooms controls pupils.⁴⁵ Foucault analyses the role of the body in maintaining order arguing through bio-power constructed by the state to control and regulate the population to normalise the rule of law after living standards became more secure and death became less of a threat.⁴⁶ Hughes critiques this analysis in terms of disability, Foucault fails to acknowledge that the body can be a subject to power and can be an agent of developing self and social transformation.⁴⁷ Foucauldian self-empowerment is a fiction and consequently the empowerment of people with disabilities would be a reflexive function of the power that is exerted over people with disabilities.⁴⁸ Hughes argues that

⁴² *Ibid.* 682

⁴³ *Ibid.* 681

⁴⁴ M Foucault, *Discipline and Punish: The Birth of the Prison* (Penguin 1991), 144.

⁴⁵ *Ibid.* 147.

⁴⁶ M. Foucault, *The History of Sexuality Volume 1: An Introduction* (Random House, 1978).139-145.

⁴⁷ B Hughes, 'What can a Foucauldian Analysis Contribute to Disability Theory?' in S. Tremain (ed.), *Foucault and the Government of Disability* (The University of Michigan Press 2005), 80.

⁴⁸ *Ibid.* 80-81.

Foucault sees politics as something that is ‘done to people rather than something that people do’⁴⁹ and he argues that bodies are imagined as the plaything of discourse and something to be written on.⁵⁰

Proactive Critical Citizenship

This thesis chooses to conceive of ‘proactive critical citizenship’ rather than ‘activist or active citizenship’ as explored in the literature review. Based on Freire’s belief that action without the consideration of praxis and words to link activism and thought achieves nothing.⁵¹ Whereas ‘proactivism’ necessitates this dialogue and reflection essential to embody the respect for humanity to produce meaningful change.⁵² Ellison argues that citizenship is a critical avenue for proactive defense of rights in the face of postmodern societal fracture and acknowledges multiple identities.⁵³ Beckett⁵⁴ challenges pluralist accounts of citizenship in relation to disability suggesting that many people with disabilities do not conceive themselves as belonging to a separate or united culture distinguished by disability status.⁵⁵ She highlights that it is important not to assume that a select number of voices within social groups represent the whole concerns of a group of people.⁵⁶ Any attempts to discuss disability within liberal legal education acknowledges that cases and issues discussed relate to the experiences of specific people with disabilities, whilst highlighting issues about the system surrounding disability rights. Beckett argues that what is necessary is a system to facilitate proactive engagement, which would lessen the need to engage defensively.⁵⁷ The thesis maintains this understanding by suggesting how proactive engagement and

⁴⁹ *Ibid.* 86.

⁵⁰ *Ibid.* 85.

⁵¹ P Freire, *Pedagogy of the Oppressed: 30th Anniversary Edition* (Continum 2000) 87

⁵² *Ibid.*

⁵³ N Ellison, 'Proactive and Defensive Engagement: Social Citizenship in a Changing Public Sphere' [2000] 5(3) Sociological Research Online

⁵⁴ AE Beckett, *Citizenship and Vulnerability Disability and Issues of Social and Political Engagement* (Palgrave Macmillan UK 2006) 162-191

⁵⁵ *Ibid.* 171-172

⁵⁶ *Ibid.* 174

⁵⁷ *Ibid.* 182-183

recognition of the citizenship of people with disabilities may translate into formal processes within legal education to advance and protect the rights of people with disabilities.

Devlin and Pothier's⁵⁸ argument for Critical Disability Citizenship focusing on the relationship between society and people with disabilities to find answers and solutions regarding issues such as access, participation and inclusion⁵⁹ develops a new understanding of citizenship that encompasses the needs of people with disabilities, focusing on genuine inclusion rather than abstract rights. However, their choice to call this 'Dis-citizenship'⁶⁰ is criticised because whilst the term is meant to encompass the experience of barriers to full citizenship by people with disabilities, it sounds like it is a parallel conception rather than experience of citizenship based on disability, which distracts from the status as citizens. Similarly to other authors and the present project they are critical of the continued focus on the 'cost benefit' approach to disability access.⁶¹ However, unlike the present project, they do not consider how this might be overcome by creating an alternative approach.

This thesis argues that critiquing legal responses to disability through legal education could achieve this. Rioux and Valentine⁶² argue that citizenship for people with disabilities requires the creation of inclusive support such as educational and accessible environments for all citizens and flexibility to meet to needs of individuals which they argue places pressure on governments to

⁵⁸ Pothier and Devlin n. 23

⁵⁹ *Ibid.* 2

⁶⁰ *Ibid.*

⁶¹ *Ibid.* 17-18, also see Crespi G S, 'Efficiency Rejected: Evaluating 'undue hardship' claims under the Americans with Disabilities Act' [1990] *Tulsa Law Journal*, 26(1), A Lawson, *Disability and Equality Law in Britain: The Role of Reasonable Adjustment* (Hart Publishing 2008) 1, A Broderick, *The Long and Winding Road to Equality and Inclusion for People with disabilities* (1st edn, Intersentia 2015) 178

⁶² M H Rioux and F Valentine, Does Theory Matter? Exploring the Nexus between Disability, Human Rights, and Public Policy. in D Pothier and R Devlin (eds), *Critical Disability Theory: Essays in Philosophy, Politics, Policy, and Law* (UBC Press 2006)

acknowledge these interrelationships and their working in practice.⁶³ The project will blend these theories of citizenship together to form the basis of and the goals for 'Proactive Critical Citizenship' to be discussed in the context of liberal legal education and the critique of the current absence and future representation of disability to advance the rights of people with disabilities.

Critical citizenship literature principally on civic and political education⁶⁴ focused on active involvement⁶⁵ and economic independence and productivity⁶⁶ and can assist with rectifying or lessening social injustice and stigmatisation. This mirrors the concept of 'active citizenship' advanced by scholars such as Grimes⁶⁷ in relation to programmes such as Street Law and are vulnerable to similar criticisms regarding difficulties with funding, access to relevant and student disappointment if they don't achieve change in practice or overreach in their involvement. This concept may be more properly described as 'activist citizenship', due its moralised conception of Freire's ideas and links to the public good. Armitage⁶⁸ argues that critical citizenship education is needed as the neo-liberalisation of higher education has led to students lacking in the ability to think critically and to consider how they might create knowledge with their tutors in order to create socially minded and

⁶³ *Ibid.* 55-56

⁶⁴ See for example, P Norris, *Critical Citizens: Global Support for Democratic Government* (OUP 1999), P Norris, *Democratic Deficit: Critical Citizens Revisited* (CUP 2011) L Johnson and P Morris, 'Towards a framework for critical citizenship education' [2010] 21(1) *The Curriculum Journal*, I Nell, 'Learning, changing and doing - Critical citizenship through ecumenical exposure' [2015] 1(2) *Stellenbosch Theological Journal*

⁶⁵ K Talvin, Art Education as Cultural Jamming Public Pedagogy in Visual Culture. in Sandlin and others (eds), *Handbook of Public Pedagogy: Education and Learning Beyond Schooling* (Routledge 2010), J Dejaeghere and L Tudball, 'Looking Back, Looking Forward: Critical Citizenship As A Way Ahead For Civics And Citizenship Education In Australia' [2007] 3(2) *Citizenship Teaching and Learning* 40-42 and 49, N Smith and others, 'Young People as Real Citizens: Towards an Inclusionary Understanding of Citizenship' [2007] 8(4) *Journal of Youth Studies* 426-429, and E Costandius and E Bilitzer, *Engaging Higher Education Curricula: A critical citizenship perspective* (AFRICAN SUN MeDIA, 2015) 46-47

⁶⁶ N Smith and others, 'Young People as Real Citizens: Towards an Inclusionary Understanding of Citizenship' [2007] 8(4) *Journal of Youth Studies* 429.

⁶⁷ R Grimes, 'Legal literacy, community empowerment and law schools—some lessons from a working model in the UK' [2003] 37(3) *The Law Teacher* 277

⁶⁸ R Armitage, A Pedagogy for Critical Citizenship, The 8th International Conference in Critical Management Studies University of Manchester, 10-12 July 2013.

aware students who use this knowledge to institute ethical practices within their own lives and decision making processes. This project criticises the suggestion that it is the university's role to create socially-minded⁶⁹ students because this is not something which can or should be forced during the process of learning. However, this project concurs with citizenship authors⁷⁰ who argue for a Freirian pedagogical approach emphasising dialogue and conscientization to achieve increased awareness and facilitate critique where necessary.

Consequently, this thesis proposes the concept of 'Proactive Critical Citizenship' rather than activist or critical citizenship. 'Proactive critical citizenship' is preferred because it requires that people create or control a situation rather than responding to it retroactively. Presenting students with the opportunity to volunteer or other means of engagement as part of a course does not give them the opportunity to create circumstances to produce change themselves which prevents the citizenship from being active or activist. 'Proactive Critical Citizenship' proposes to create spaces and impetus for students to engage in self created or self directed public engagement opportunities. Moreover, this thesis argues that 'proactivism' necessitates dialogue and reflection that Freire argues is necessary to make activist sentiments meaningful.⁷¹ It is this emphasis on dialogue and reflection which Ellison⁷² argues is essential in creating the respect for humanity needed to produce meaningful change that differentiates the concept of Proactive Critical Citizenship

⁶⁹ See Oakeshott and O'Hear in Literature Review 'Why Liberal Legal Education?' 58-60 and Institute for citizenship, 'Challenge of defining citizenship' (*What is Citizenship*, as accessed) <<http://www.citizen.org.uk/what-is-citizenship.html>> accessed 18 May 2018. See also discussion of charity on p 15-16

⁷⁰ R Armitage n.68. Costandius and E Biltzer n.65. *Ibid.*

⁷¹ P Freire, *Pedagogy of the Oppressed: 30th Anniversary Edition* (Continuum 2000) 87

⁷² See Theory Chapter

from Jeagahere in the political and civic literature.⁷³ This change is needed because this thesis argues that citizenship means more for people with disabilities than a nominal concept and a threshold of acceptance.

Assurance of rightful access

In response to the difficulties of maintaining the concept of reasonable adjustment as discussed in the literature review, this thesis extends the concept of ‘Assurance of Rightful Access’⁷⁴ as created and explored in my Master’s dissertation,⁷⁵ to the context of Higher education and in particular legal education. It emphasises that people with disabilities are valid and equal rightsholders and that this perspective should always be the starting point when making decisions about access and expenditure. This removes the notion of disability access as an act of charity by a benevolent society or government. Secondly, it creates a more definite and objective standard removing the issue of plasticity of reasonable adjustment identified by Lawson.⁷⁶ It overcomes the shortcomings of ‘reasonable adjustment’ because ‘assurance’ inspires confidence and certainty.⁷⁷ ‘Rightful’ centres the concept within the context of the CRPD and creates

⁷³J Dejaeghere and L Tudball, 'Looking Back, Looking Forward: Critical Citizenship As A Way Ahead For Civics And Citizenship Education In Australia' [2007] 3(2) *Citizenship Teaching and Learning Special Issue: Reflections on the IEA Civic Education Study (1995-2005)*

⁷⁴ A Pearson ‘A Comparative Study of ‘Reasonable Adjustment’ and ‘Undue Burden’ Provisions for People with Disabilities Accessing Public Transport Services under European Union Law.’ Keele University September 2014 A.V Pearson., ‘What's worth got to do with it? Language and the socio-legal advancement of disability rights and equality’ (2014) 20(3) *Web JCLI*. A.V Pearson, 'The debate about wheelchair spaces on buses goes 'round and round': access to public transport for people with disabilities as a human right'. (Spring 2018) 69(1) *NILQ*

⁷⁵ A Pearson ‘A Comparative Study of ‘Reasonable Adjustment’ and ‘Undue Burden’ Provisions for People with Disabilities Accessing Public Transport Services under European Union Law.’ Keele University September 2014

⁷⁶ A Lawson, Different types of reasonable? Critical reflections on reasonable accommodation and progressive realisation in the UN CRPD, 3rd April 2014, Maastricht University, Equal Rights and Accessible Environments: The UN CRPD and EU Disability Law and Policy, <https://mediasite.maastrichtuniversity.nl/mediasite/play/113519bbc41f4955a102531b7776e78a1d>; A, Lawson, 'People with Psychosocial Impairments or Conditions, Reasonable Accommodation and the Convention on the Rights of People with disabilities' [2008] *Law in Context* Vol. 26 62, 68.

⁷⁷ A Pearson ‘A Comparative Study of ‘Reasonable Adjustment’ and ‘Undue Burden’ Provisions for People with Disabilities Accessing Public Transport Services under European Union Law.’ Keele University September 2014 56. Ideas published in A.V Pearson., ‘What's worth got to do with it? Language and the socio-legal advancement of disability rights and equality’, (2014) 20(3) *Web JCLI* A.V Pearson, 'The debate about wheelchair spaces on buses goes 'round and round': access to public transport for people with disabilities as a human right'. (Spring 2018) 69(1) *NILQ*

a sense of accessibility as being something that cannot and should not be denied to people with disabilities, especially not on economic grounds as other rights such as those in the CRPD could not be limited or violated on these grounds.⁷⁸ Access should be interpreted in line with Article 9 CRPD to apply to all areas of society at all times.⁷⁹ It should be interpreted to make the duty to assure access to people with disabilities anticipatory. This would signify and cement the full evolution from the conception of 'reasonable adjustment' as rights by charity to rights by humanity which would completely exercise any remaining sense of people with disabilities as people of other status.⁸⁰ 'Rightful' overcomes the possibility that if notions of reasonableness and financial burden were removed from access provision then society could be expected to fund any measure regardless of the cost. Qualified rights are well established within human rights discourse outside of disability.⁸¹ By centring rights in the new imagining of access, the notion of qualification and balance with the needs of others is stated implicitly. Additional thresholds of 'reasonable' and 'undue burden' go beyond qualifying rights and place, and will continue to place, people with disabilities at a disadvantage when accessing their rights compared to those without. However, change cannot occur in an economic vacuum. People with disabilities should be regarded as consumers and productive members of society both in and outside of traditional employment and funding for access should maximise and respect this.

Cohen responds to resource allocation with 'equality of access to advantage' to overcome involuntary circumstances leading to low levels of welfare. He argues that resource allocation should maximise a persons existing capabilities as well as their

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ Equality and Human Rights Commission, 'Can human rights ever be restricted?' (*How are your rights protected?*, 04 May 2016) <<https://www.equalityhumanrights.com/en/what-are-human-rights/how-are-your-rights-protected>> accessed 2 October 2018

welfare.⁸² This approach does not work in relation to disability as it fails to consider how wider social structures, such as attitudinal and institutional barriers, may limit a persons' ability to develop or to gain the capabilities or capacities necessary to exercise certain opportunities. The false natural ending point of the education of people with disabilities as demonstrated in some of the human rights documents discussed in the thesis is an example of this.

Cohen's insistence that people who are either strong and clever or weak and stupid have access to the same opportunities is difficult to support.⁸³ Somebody with no aptitude for science could not be an astrophysicist and somebody unathletic could not be a weightlifter, it would be hard to improve such natural conditions to those unnatural lengths. So, having the opportunity to do something is meaningless. This mimics the position of the rights of people with disabilities prior to the CRPD. Previous legislation created opportunities without the secondary description and understanding necessary to facilitate the enjoyment of these rights. Furthermore, Cohen's conceptions and application in the context of what he describes as disability is impairment such as paralysis or arthritis, rather than the social response to impairments, disability.⁸⁴ Moreover, his straw man of Tiny Tim⁸⁵ as the eternally happy impaired person with all of the attendant subtext of Victorian morality attached is a patronising and simplistic viewpoint of both impairment and disability. There is no way of judging Tiny Tim's happiness save for Charles Dickens' presentation of it to facilitate his moralistic tract.⁸⁶ In reality, Tiny Tim was probably unhappy, not only was he poor and hungry, but he existed in a time before disability rights. Cohen's discussion of costly 'developed' tastes⁸⁷ is difficult to sustain in the context of disability. Under

⁸² G. A Cohen, *Against Equality of Resources: Relocating Dworkin's Cut*. in M Clayton and A Williams (eds), *Social Justice* (Blackwell Publishing 2004) 134-153

⁸³ *Ibid.*

⁸⁴ *Ibid.* 135-139

⁸⁵ *Ibid.* 136-137

⁸⁶ M Stoddard Holmes, *Fictions of Affliction Physical Disability in Victorian Culture* (University of Michigan Press 2004) 1-2

⁸⁷ Cohen n.82 140

social and interactionist models, disability results from outside attitudes and structures rather than choice. Cohen's decision to consider only impairment places responsibility for redress firmly on people with impairments. If a person with impairment chose not to use a wheelchair or submit themselves to other bodily modification to increase access to advantage and to reduce costs, alternative measures would not be financed.⁸⁸ For example, somebody who identifies as Deaf who might be suitable for cochlea implantation but having cultural and linguistic identity decide only to use sign language, the cost of an interpreter would not be met by the state. In terms of disability rights this is untenable because the CRPD protects the right to communicative freedom.⁸⁹

Cohen's approach echoes the medical approach to disability making it incompatible with recent developments within disability and law. It could represent a step backwards in terms of funding equality, despite seemingly inclusive language. Consequently, though Cohen fashioned this approach in response to what he perceived as shortcomings of Dworkin's egalitarian approach to justice⁹⁰, in the context of disability, neither is desirable but Cohen's is less so because Dworkin's does not problematize the individual.⁹¹ Anderson offers democratic equality, which recognises the need to respond to socially produced inequalities through categorisation and social structure to prevent oppression of certain groups.⁹² However, the emphasis on waged work and civic involvement⁹³ in return for rights has the potential to exclude those with profound impairments.⁹⁴ She also frames rights as obligations to others. This is reliant on a common view of morality, something that cannot be guaranteed. This thesis

⁸⁸ *Ibid.* 143-149

⁸⁹ Article 21 - Freedom of expression and opinion, and access to information para. d.

⁹⁰ R Dworkin, Equality of Resources. in M Clayton and A Williams (eds), *Social Justice* (Blackwell Publishing 2004) 110-133

⁹¹ *Ibid.* 117-125

⁹² E S Anderson, Against Luck Egalitarianism: What Is the Point of Equality?. in M Clayton and A Williams (eds), *Social Justice* (Blackwell Publishing 2004) 180

⁹³ *Ibid.*

⁹⁴ *Ibid.* 176-178

critiques it as a mechanism of enforcement without space for critical engagement by the individual. Neither conception is acceptable in the human rights response to disability. ‘Assurance of rightful access’⁹⁵ seeks to address attitudinal barriers and demolish a veneer of access and opportunity as outlined in Cohen’s ideas because framing it in the rights discourse similarly to that in the CRPD includes the steps that must be taken to ensure access in practice such as the right to appropriate communication methods etc. to be able to access education.

Critical Legal Theory

In response to Expressive Law’s reliance on under-defined concepts in its approach to disability, this thesis uses a modified Critical Legal Studies perspective. Kumari Campbell⁹⁶ argues that activists with disabilities have placed great faith in the legal system,⁹⁷ she argues that there has been insufficient critique of the role that law and legislators have played in maintaining negative ontologies of disability by creating separate categories of discrimination and the notion of disabled or able bodiedness.⁹⁸ Furthermore she argues that law plays a role in linking the concept of disability and the subversive to a lack of citizenship which can only be remedied by submitting to interventions which correct the body or remove disability.⁹⁹ Arguably, placing disability within the context of liberal legal education requires developing an understanding of the relationship between disability and the law and an adoption of a definition of disability and law which facilitates critical and responsive, rather than static and negative, to ensure that avenues for change remain open. Critical Legal Studies questions the extent to which law is both a site of continuing hegemony and

⁹⁵A Pearson n. 77

⁹⁶ F K Campbell ,Legislating Disability Negative Ontologies and The Government of Legal Identities. in S Tremain (ed), *Foucault and the Government of Disability* (University of Michigan Press 2005)

⁹⁷ *Ibid.* 108

⁹⁸ *Ibid.* 109-17

⁹⁹ *Ibid.* 119-120

oppression¹⁰⁰ and the way in which legal institutions including legal education, can both continue this but offer a site of resistance.¹⁰¹ Hosking¹⁰² has applied Critical Disability Theory in a legal setting to the socio-legal policies of the EU. Hosking's consideration of Critical Disability Theory is blended with a Critical Legal Studies perspective which focuses on legal realism which takes into account the circumstances, personalities, ideological, political and economic pressures of the day¹⁰³ rather than relying on the closed world of legal statutes and case law to answer legal questions.¹⁰⁴ Hosking highlights that in Critical Legal Studies, Law is inherently unprincipled and its rejection of liberalism suggests that it would end the relationship between law and morality.¹⁰⁵ This makes Hosking's critical jurisprudence of disability the perfect lens to examine the issues identified in the literature review.¹⁰⁶ However, like Devlin and Pothier, Hosking dismisses liberalism in relation to disability by focusing on its conception of disability as personal misfortune to be prevented with greater value placed on normalcy and economic productivity.¹⁰⁷ The wholesale vilification of an individualist approach to disability is problematic. This approach denies the history of liberalist responses to disability and the possibility that such attitudes can and do remain, leaving it open to the criticisms of fatalism.¹⁰⁸ Consigning the liberal or neo-liberal focus on resources and economic input by people with disabilities to the dustbin of history, even though it remains apparent in the legislative aims of policies relating to people with disabilities and in discussions of resource allocation through reasonable adjustment and undue burden, theorists and people with disabilities are pushing against the river rather than changing the course of flow. In expressive theory it is assumed that the advancement

¹⁰⁰ D Kennedy, *Legal Education and the Reproduction of Hierarchy: A Polemic against the System*. in D Kennedy (ed), *Legal Education and the Reproduction of Hierarchy: A Polemic against the System* (New York University Press 2004) 17-29

¹⁰¹ *Ibid.* 30-48

¹⁰² D L Hosking, 'A Critical Study of European Union Law and Policy Related to Disability' (PhD, University of Leicester 2011)

¹⁰³ RM Unger, *The Critical Legal Studies Movement: Another time, A Greater Task* (3rd edn, Verso 2015) 9

¹⁰⁴ Hosking n 102. 33

¹⁰⁵ *Ibid.* 55

¹⁰⁶ See Literature Review.

¹⁰⁷ *Ibid.* 29-33

¹⁰⁸ See discussion of Zembylas re. Rorty, on p. 94

of the rights of persons with disabilities will work on the basis of a shared morality. Hosking's social model definition of disability¹⁰⁹ positively incorporates the feelings, attitudes and experiences of the individual with a disability rather than dictating to them and acknowledges that people with disabilities can share other characteristics which may lead to oppression rather than privileging one above another. This recognises the inability of the current legal and social systems to respond to what Minow calls the 'dilemma of difference'¹¹⁰ whereby people with disabilities must appear to be like other groups in society to ensure that their needs are met. Consequently, this project will blend a modified application of Hosking's Critical Disability jurisprudence to the content of the Disability rights framework at the supranational, international and national levels in relation to education. This centres around the concepts of dignity, status, participation, education and barriers. It will explore the role and limitations with the law in this regard. It will consider the relationship between the law, education and the DPM and DPOs and NGOs and the difference between activism and proactivism. Thirdly, it will apply the theory of Critical pedagogy to the processes of legal education to suggest a way of creating proactive critical citizens in practice. These factors create and support the theory of Proactive Critical Citizenship around disability that is presented in this thesis.

Critical Pedagogy, Legal Education, Values and Rights

The thesis applies Critical Pedagogy Theory to Liberal Legal Education exploring human rights and values comes after reading an emerging critique of current approaches to human rights education which are focused on communicating set ideas to marginalised groups about their rights in a prescribed way which does not allow for critique. The involvement of people with disabilities in the drafting of the CRPD and

¹⁰⁹ Hosking n. 102. 40-41

¹¹⁰ M Minow, *Making All the Difference: Inclusion, Exclusion, and American Law* (Cornell University Press 1990)

protesting for domestic legislation¹¹¹, renders it beyond critique or automatically inclusive.

This thesis uses pedagogy in spite of the criticisms because it shares Courtney and Stevenson's fear¹¹² that micro-labelling could become unworkable. It also shares Knowles's view of undergraduate learning¹¹³ which shares more commonality with pedagogy than andragogy. This thesis focuses on pedagogy as the method and practice of teaching,¹¹⁴ rather than examining theories of how students learn,¹¹⁵ because this would be of little value without a representative sample to contextualise the theories.

Freire's *Pedagogy of the Oppressed*¹¹⁶ offers a theoretical frame through which to view the process of higher education and the increase of awareness of the absence of certain members of society within social discourses, including law. Goodley applies similar arguments to assist with the inclusion of children with disabilities into education and to discuss how to approach disability and the neoliberalisation of education.¹¹⁷ His chapter could provide an accessible introduction for academics looking to explore ideas around disability in higher education.¹¹⁸ Freire argues that the oppressed must recognise themselves as such and have a key role in the development of a pedagogy of the oppressed.¹¹⁹ people with disabilities It is arguable that people with disabilities'

¹¹¹ See Scope, 'The Disability Discrimination Act 1995: The campaign for civil rights' (*youtube.com*, 2 November 2015) <<https://www.youtube.com/watch?v=dwP1xuZZFuY>> accessed 15 May 2017 and United Nations, 'Secretary-General hails adoption of landmark Convention on rights of people with disabilities' (*un.org*, 13 December 2006) <<http://www.un.org/press/en/2006/sgsm10797.doc.htm>> accessed 5 March 2018

¹¹² B Courtney and R Stevenson, 'Avoiding the threat of gogymania.' [1983] 6 (7) *Lifelong Learning: An Omnibus of Practice and Research* 10-11 in J Davenport and JA Davenport, 'A Chronology and Analysis of the Andragogy Debate' [Spring 1985] 35(3) *Adult Education Quarterly* 156

¹¹³ MS Knowles, *The modern practice of adult education* (New York: Cambridge, The Adult Education Company 1980). in G Holmes and M Abington-Cooper, 'Pedagogy vs. Andragogy: A False Dichotomy?' [Summer/Fall 2000] 26 (2) *Journal of Technology Studies*.

¹¹⁴ OED (3rd ed. 2010) 1309

¹¹⁵ D Schunk, *Learning Theories: An Educational Perspective* (6th edn, Pearson 2012) 3

¹¹⁶ Freire n. 71.

¹¹⁷ D Goodley, *Disability Studies: An Interdisciplinary Introduction* (2nd edn, Sage 2017) 170-190

¹¹⁸ *Ibid.*

¹¹⁹ Freire n. 71. 54.

status as the oppressed has been self-recognised through the work and existence of the DPM. He argues for any pedagogy to be humanist rather than humanitarianism, as humanitarian generosity is exercised by oppressors as a means of oppressing.¹²⁰ Freire poses the critical question of how liberation and change can occur without political backing and support, which is not traditionally available to those deemed to be oppressed.¹²¹ Change comes after the oppressed have begun to see themselves as such. When people see the world through the eyes of the oppressed and commit themselves to bringing about social change, the view of the pedagogy changes from that of the oppressed to one that applies to all people in the process of liberation.¹²² This is an important maxim to take forward in the development of an inclusive legal education which does not, in seeking to include one group, exclude another, but acknowledges that all people have a role and a value in the process of social change. Freire argues that the oppression is never seen by the oppressor it is always transferred to the oppressed, who are referred to as: ‘those people, the blind and envious masses, savages, natives or subversives,’ who are characterised as being, ‘violent, wicked and ferocious’.¹²³ The thesis uses person first language in relation to disability despite reservations expressed by other theorists such as Devlin and Pothier¹²⁴ because it will avoid the dehumanisation of people with disabilities as well as emphasising commonality rather than difference. Freire argues that this act of dehumanization of the oppressed, dehumanises the oppressors. However, the oppressed have the power to both free and re-humanise the oppressors by restoring their humanity by ending the oppression through rebellion.¹²⁵ For Freire, removing an oppressive regime does not end oppression as the new regime removes the humanist element and deprioritises liberation.¹²⁶ Consequently, any integration of Disability discourse into legal education

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² *Ibid.* 54.

¹²³ *Ibid.* 56.

¹²⁴ Pothier and Devlin n. 23,3-8

¹²⁵ Freire n. 71.

¹²⁶ *Ibid.* 57.

must maintain a balance with the representation of other traditional minority groups and must ensure that it exists within a culture of debate and critique rather than blind acceptance to create conscientisation.¹²⁷ However, Freire argues that it is necessary for the oppressed to understand themselves and their experiences in relation to the wider world to make sense of their own knowledge and position to be able to engage in transformative dialogue.¹²⁸ This dovetails well with liberal education's emphasis on conversational rather than didactic teaching.¹²⁹

Minow examines the concept and treatment of difference in American Law as an expression of exclusion or inclusion.¹³⁰ With regard to morality, she argues that labelling expresses morality and can be positive or negative for those with less influence in society.¹³¹ She also highlights that law assigns labels to different groups within society to limit as well as increase their rights and ability to participate.¹³² Minow argues that labels and law interact to create difference and disempower¹³³ and that there is a potential for any attempts by individuals to challenge negative labelling and social practice to recreate differences or to deny the effect of differences and stigma.¹³⁴ Minow argues that it is necessary to consider the effects of labelling on the individual and groups sharing characteristics. She cites examples such as those with non-physical disabilities who may be unable to express their wishes directly or differential treatments between old and young which highlights and impounds the difference in age without explicitly recognising it. This mirrors Freire's discussion of conscientisation where it is necessary to inform newly empowered groups about their acquisition of empowerment so that they do not become oppressors by default. In this thesis, it is

¹²⁷ *Ibid.*

¹²⁸ *Ibid.* 73.

¹²⁹ A Bradney, 'Liberalising Legal Education' in F Cownie, 'The Law School – Global Issues, Local Questions' (Ashgate Publishing Limited, Hampshire 1999) 43. See also Why Liberal Legal Education in Lit review.

¹³⁰ M Minow, n.110 1-4

¹³¹ *Ibid.* 5-6

¹³² *Ibid.* 8-9

¹³³ *Ibid.* 20-23

¹³⁴ *Ibid.* 47-48

necessary to ensure that whilst student attention is drawn to the absence of disability discourse within legal education and knowledge of it amongst people with disabilities generally, it should not and cannot supersede the importance of other discourse for members of society sharing other characteristics and acknowledge that the discourse will change as progress is made. Minow argues that the dilemma of difference is based on five unstated assumptions within society. Firstly, that difference is intrinsic, which she argues can be reinforced by legal processes where judges and the legislature look for a situation to fit within certain facts and for labels to be ascribed.¹³⁵ Secondly, that the norm does not need to be stated. Society does not explain its straw man.¹³⁶ Thirdly, the observer can see without a perspective. A person making decisions about the treatment of others can attain and maintain a sense of impartiality.¹³⁷ Fourthly, that other perspectives are irrelevant.¹³⁸ This highlights the tendency of people making decisions to stay within their own cultural context rather than looking to different perspectives which may alter their assumptions about the world as well as the meaning of difference.¹³⁹ Finally, that the status quo is natural, uncoerced and good.¹⁴⁰ This is based on the idea that societal arrangements are formed by neutral governments and that actions to change the status quo are different from omissions or failure to act that maintains it. Arguably, reasonable adjustment is a manifestation of this assumption as well as evidence of Minow's warning that responses to discrimination may have the effect of impounding or reintensifying difference. As an accepted concept it is difficult to challenge or to reimagine the concept of reasonable adjustment. It has now become part of the status quo in response to the dilemma of difference posed by disability. The premise of this thesis is that failure to educate people with disabilities, and society generally, about the rights of people with disabilities maintains both the status quo and

¹³⁵ *Ibid.* 53-56

¹³⁶ *Ibid.* 56-60

¹³⁷ *Ibid.* 60-61

¹³⁸ *Ibid.* 66

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.* 70

the dilemma of difference because the lack of this knowledge and understanding of the concepts around it means that they remain unchallenged and implicitly accepted as something which is non-coerced and good and that people with disabilities have the freedom through their organisations and the DPM to challenge these ideas as they see fit. As evidence provided in the proceeding chapters demonstrates, this does not always produce change in practice. The cumulative effect of these unstated assumptions is that it can make people feel hopeless and challenge notions of equality because, if these assumptions will occur whether or not an individual acknowledges them and equality first focused on sameness, then it can be said that they undermine equality.¹⁴¹ Therefore, Minow argues that the dilemma of difference can be conquered if these issues are exposed and debated and the issues of power in relationships and negative consequences of difference offers new angles of understanding and possibilities for change.¹⁴² Minow argues that it is necessary for society and institutions to re-examine the way they think about difference. Rather than locating it within the individual they should consider a number of factors in the way in which they define difference. She highlights that for many their difference may be a source of pride.¹⁴³ In regard to institutional responses, Minow states that whilst discrimination still exists or that the pride of certain characteristics is not recognised, then people who share certain characteristics may resist using social structures and changes designed to address the inequality they experience.¹⁴⁴ Minow also cautions against solutions to the dilemma of difference which focus on the behaviour or responses of the individual because she argues that this places the responsibility for overcoming individual barriers back onto the individual and away from the exclusionary practices within society.¹⁴⁵ Whilst this is sound to some extent, arguing that difference should never be disregarded as an individualist issue and the individual should always feel empowered to take part in

¹⁴¹ *Ibid.* 74

¹⁴² *Ibid.* 78

¹⁴³ *Ibid.* 90

¹⁴⁴ *Ibid.* 92-93

¹⁴⁵ *Ibid.* 93

discussions and social changes rather than merely have them dictated by an abstract moral conviction imposed from above either from government or academic sources is problematic. It fails to account for different experiences and confidence levels in terms of engagement, meaning that insistence on the group identity could lead to the same voices speaking for everyone all the time. What is needed, as this thesis argues, is for avenues of engagement to open in new contexts and for these contexts to empower new voices. Minow does recognise the value of having people labelled as different in gauge with the process of social change but she highlights the tendency for programmes to refuse to make room for these voices which can make this difficult in practice.¹⁴⁶ Minow considers practical approaches to the rights of minority groups within legal discussions.¹⁴⁷ The first she identifies as the ‘abnormal persons approach’ which originates from a time where people were divided into the ‘normal’ and the ‘abnormal’ and the legal treatment of individuals depended upon which group they belonged to.¹⁴⁸ She argues that there are some contexts where similar ideals can be seen, those with ‘normal competence’ or those with full capacity enjoy their rights and can be held responsible for their acts because they are able to make reasoned decisions and appraisals of their conduct.¹⁴⁹ Those categorised as having abnormal capacity are subject to legal protections which remove some of their rights in order to mitigate their abnormal status and Minow argues they are seen as suffering both natural and legal disabilities.¹⁵⁰ In contrast, a rights based approach is premised on the idea that legal rights apply to everybody and that as a consequence of personhood and belonging to citizen states, all people should be free from interference and there can be no justification for interference with their rights as a result of some external characteristics.¹⁵¹ However, Minow highlights that whilst this may be the starting

¹⁴⁶ *Ibid.* 95

¹⁴⁷ *Ibid.* 105-106

¹⁴⁸ *Ibid.*

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.* 107

premise there is a scepticism in the rights based approach which enables new rights to be created to remove notions of discrimination or for rights to be removed in the face of demonstrable evidence that they should be removed.¹⁵² At best, Minow argues that the rights analysis seeks to expose hostility and thoughtlessness behind the attribution of difference by examining the role of judges and the legal framework.¹⁵³ At worst, she argues, it provides a new layer of support for the assignment of difference based on widely held views and the imposition of differential treatment without explaining why this occurs.¹⁵⁴ Minow also explores the social relations approach which assumes that there is a basic connection between people which is not dependent on autonomy.¹⁵⁵ It challenges methods of social organisation and categorisation.¹⁵⁶ This approach emerged in response to historical errors in relation to difference and to challenge the power relations that it created.¹⁵⁷ It also challenges the idea that claims of difference are located solely within the individual.¹⁵⁸ Social relations view responds to the idea of the autonomous individual with the view that people live in relationships and never exist outside of them meaning that difference can only be a statement of relationships and is created in comparison with others.¹⁵⁹ With regard to legal analysis, the approach solicits challenges from those labelled as different and focuses on institutional arrangements as the source of the problem and argues that expressions of difference should only continue if they do not lead to power relations which harm one group of people over another.¹⁶⁰ However, Minow argues that this is a difficult analysis to undertake in practice at the legal level because there are hierarchies of power which exist in the formation and communication of decisions.¹⁶¹ This thesis argues that rather than making special room for the perspectives of disability within the liberal legal

¹⁵² *Ibid.* 108-109

¹⁵³ *Ibid.* 110

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.* 110-111

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.* 111

¹⁶⁰ *Ibid.* 112

¹⁶¹ *Ibid.* 113

curriculum, it should, wherever possible, be incorporated as part of general learning because specialist programmes could be viewed as costly and time consuming.¹⁶²

Coysh highlights a lack of critical scholarship concerning the provision and success of Human Rights Education Programmes.¹⁶³ She highlights that the role of NGOs and the UN in providing human rights education has led to bureaucratised language of human rights which renders critique difficult.¹⁶⁴ Additionally, she applies ‘orientations of human rights’ education, including a critical interpretive orientation, which she argues overcomes the issue present in the transmission model which focuses on increasing knowledge of the legal rights and protections for marginalised groups without challenging failures of the established discourse to explore the reasons for the remaining difficulties in actioning rights in practise.¹⁶⁵ Consequently, she advocates that this approach should be blended with praxis and critical pedagogy to enable people to critique both the concepts and communication of rights and the potential power relationships between educators and learners, to critique the purpose and effectiveness of rights.¹⁶⁶ This thesis grounds the discussion into liberal legal undergraduate curriculum in relation to disability, to extend Coysh’s arguments into a new context.

Zembylas argues that critical pedagogy could facilitate human rights education without sentimentality, which this thesis supports.¹⁶⁷ This contrasts Rorty’s view¹⁶⁸ that sentimentality is important to enlighten students to the suffering of others and the commonality of dignity¹⁶⁹, which this thesis also champions. However ultimately, this thesis follows Zembylas’s criticism of Rorty’s lack of framework to support his

¹⁶² *Ibid.* 96-97

¹⁶³ J Coysh, *Human Rights Education and the Politics of Knowledge* (1st edn, Routledge 2017) 6-9

¹⁶⁴ *Ibid.* 71

¹⁶⁵ *Ibid.* 28-29

¹⁶⁶ *Ibid.* 34-42

¹⁶⁷ M Zembylas, Emotions, Critical Pedagogy, and Human Rights Education. in M Bajaj (ed), *Human Rights Education: Theory, Research, Praxis* (University of Pennsylvania Press 2017) 74

¹⁶⁸ R Rorty, Human Rights, Rationality and Sentimentality. in R Rorty (ed), *Truth and Progress: Philosophical Papers Volume 3* (Cambridge University Press 1998) 167-185

¹⁶⁹ *Ibid.*

suggestions and his over evaluation of suffering and the potential to create fatalism rather than empowerment. He draws on the work of Rorty¹⁷⁰ who argues that human rights education should be sentimental to make students more familiar with ‘people like us’ to create non-exclusionary identities and capacity for sympathy and solidarity using sad and sentimental stories which leads students to realise that people suffer like they do and are therefore permitted the same sense of dignity.¹⁷¹ However, Zembylas highlights that Rorty does not describe how this sentimentality will lead to action and thus eliminate the discussion and nor does he consider the structural elements of society that lead to the denial of rights. Nor does he consider the potential damage of the over evaluation of suffering which may make it difficult to overcome their suffering and turn them into trapped submissive victims. Additionally, he considers that such a viewpoint has the effect to turn emphasis away from human rights. This fatalism is compounded by the development of a ‘banal moral ethos grounded in self-centred altruism [...]’¹⁷² where power must become the symbol of solidarity without recognising it which turns away from rights. In response to these considerations Zembylas considers that critical pedagogy creates the discomfort in students¹⁷³ which reveals power relations creating sentimentality whilst avoiding fatalism by acknowledging shared vulnerability and moral responsibility.¹⁷⁴ Zembylas cautions against sessions becoming therapy for students¹⁷⁵, to prevent staff overreach and potential trauma for students.¹⁷⁶ Kennedy shares similar reservations against canonising Human Right law as a means of fighting on behalf of ‘victims’ whilst failing to consider the role that law might play in continuing and in some cases legitimising human rights abuses.¹⁷⁷ This can be seen in several documents in the proceeding

¹⁷⁰ *Ibid.*

¹⁷¹ *Ibid.*

¹⁷² Zembylas n. 167. 57-58

¹⁷³ *Ibid.* 60

¹⁷⁴ *Ibid.* 61-62

¹⁷⁵ *Ibid.* 64

¹⁷⁶ *Ibid.* 64-65

¹⁷⁷ D Kennedy, The International Human Rights Regime: Still Part of the Problem? in O Windahl Pedersen (ed), *Examining Critical Perspectives on Human Rights* (Cambridge University Press 2013) 29.

chapters where language is used to justify pragmatic economic decision making, whilst presenting a marketing exercise in moralised human rights compliance. Consequently, any integration of disability discourse into the liberal legal education curriculum must acknowledge and respond to these concerns.

Webb argues that the prevailing deontological approach to morality and ethics in legal education focusing on whether lawyers are performing the correct or expected functions within context is insufficient for several reasons.¹⁷⁸ Firstly, ethics of obligation cannot sufficiently account for the complexity of legal roles this means that it is likely to be ignored or to provide little meaningful guidance to those who need it.¹⁷⁹ Secondly, it creates an artificial gap between ethics of action and those of the actor.¹⁸⁰ The focus on the act rather than the agent means that lawyers are defined by what they do, leaving all moral responsibility with the client. Webb argues that this continues to paint a picture of the profession as amoral and to create a false differential between words spoken by the lawyer or the client, which is not held up in practice based on public reaction to certain cases.¹⁸¹ He argues that this can cause a division of identity which make it difficult for lawyers to claim a moral identity under pressure of having to maintain a sense of neutrality.¹⁸² In response to these concerns Webb considers the potential of virtue ethics to overcome them.¹⁸³ This is primarily based on the fact virtue ethics are not bound by rigid rules which fail to account for the capricious nature of human behaviour because it is based on the interpretations of the individual in certain situations.¹⁸⁴ However, Webb highlights the potential weaknesses of virtue ethics such as the failure to provide concrete advice as to the appropriate

¹⁷⁸ J Webb, 'Being a lawyer/ Being a Human Being' [2002] 5(1&2) Legal Ethics

¹⁷⁹ *Ibid.* 131-132.

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid.*

¹⁸² *Ibid.* 133-134

¹⁸³ *Ibid.* 135

¹⁸⁴ *Ibid.* 134

standard of action.¹⁸⁵ Secondly, it focuses on the actions and interest of the moral agent. It is not impossible for agents to gain personally from actions but that too much focus on this rather than the focus on the effect of action on others diminishes the role of virtue in the interaction.¹⁸⁶ Lastly, he highlights weaknesses in terms of whether it is possible for people to pursue ethical course of action in spite of personal desires or inclinations.¹⁸⁷ Virtue ethics is focused on experiences and interactions based on authenticity.¹⁸⁸ This focus on virtue ethics can be seen in the legal response to disability in the existing framework as it is assumed that states and citizens will act in certain ways without explaining or educating them to understand the need to perform or refrain from certain behaviour. To centralise rights discussions within the undergraduate legal curriculum it is necessary for students to have a clear understanding of rights and their status in both law and society. Douzinas argues that human rights only have paradoxes to offer and that energy comes from their aporetic nature,¹⁸⁹ that they are ‘internally fissured,’¹⁹⁰ used as the defence of individuals against state power. This is derived from the image of an individual who already enjoys absolute rights.¹⁹¹ She highlights that human rights can be relied on to such an extent that people become blind to their erosion and the potentially nightmarish turn of tolerance into totalitarianism.¹⁹² She argues that much of this change in the reality and substance in rights can be traced back to the switch from the sense of natural law with an idea of unified human progression towards a particular goal of freedom to the postmodernist idea of fractured social aims and the idea of power which then led to uncertainty and confusion and a loss of faith in absolute concepts.¹⁹³ Conversely, Dworkin argues that rights have a value as a statement of respect from majorities to

¹⁸⁵ *Ibid.* 135

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.* 136-138

¹⁸⁹ C Douzinas, *The End of Human Rights: Critical Legal Thought at the turn of the century* (Hart Publishing 2000) 21

¹⁹⁰ *Ibid.*

¹⁹¹ *Ibid.* 20

¹⁹² *Ibid.* 17

¹⁹³ *Ibid.* 6-7

minorities.¹⁹⁴ There are weaknesses in Dworkin's presentation of rights such as the idea that rights are a gift from the majority to the minority. However, his emphasis on majority groups understanding the importance of rights to minority groups is helpful in highlighting how to maximise and utilise rights to ensure understanding of community goals in relation to rights to close the gap between the ideals and the morality of the law and its performance in practice.¹⁹⁵ He highlights the importance of self-reflexivity to avoid moral elitism and by doing this he creates the morality of his community in standardised form.¹⁹⁶ Hart argued that there need be no link between the law and morality¹⁹⁷ but that law can guide and appraise conduct and that laws and morals share certain techniques in how they do this.¹⁹⁸ Critical legal theory does not reject the concepts of rights but Delgado argued that the critical legal studies relationship with rights is problematic but that they can serve as a rallying cry to bring people together and restrain resistance in public and practice.¹⁹⁹ Hosking's identified that they must still be subject to the same critical lens as other social constructs to be useful.²⁰⁰ This study will use concepts of rights in the critical discourse analysis of the primary sources but will acknowledge that the meaning behind these and their use and role within the advancement of the rights of people with disabilities both in society and education must be critiqued in the same way as the other concepts identified in the previous chapter and as guided by theories discussed here.

Tibbitts²⁰¹ argues that human rights education needs to appreciate that social change is not restricted to formal channels but spreads across society, so different groups must

¹⁹⁴ R Dworkin, *Taking Rights Seriously* (2nd 1997 edn, Bloomsbury Academic 2013) 246-247

¹⁹⁵ *Ibid.* 246

¹⁹⁶ *Ibid.* 304-305

¹⁹⁷ HLA Hart, *The Concept of Law* (3rd edn, OUP 2012) 155-157

¹⁹⁸ *Ibid.* 167-173

¹⁹⁹ R Delgado, 'The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?' [1987] 22 Harv CR- CLL Rev 303-307

²⁰⁰ D L Hosking, 'A Critical Study of European Union Law and Policy Related to Disability' (PhD, University of Leicester 2011) 36-37

²⁰¹ FL Tibbitts, Evolution of Human Rights Education Models. in M Bajaj (ed), *Human Rights Education: Theory, Research, Praxis* (University of Pennsylvania Press 2017)

be approached in different ways to achieve the goals of the UNDHRET.²⁰² She argues that critical pedagogy incorporates participation, empowerment, transformation and plurality of ideas necessary to achieve this.²⁰³ However, this thesis critiques Tibbitts' assertion²⁰⁴ that NGO involvement could legitimise and strengthen Human Rights education due to reliance on moral and value based arguments without critical reflection and the tendency to view people with disabilities as a homogenous group. Moreover, NGO involvement in drafting legislation may lead to increased reification of their methods and the legislation to students. This thesis follows Tibbitts' view that Human Rights education has traditionally been seen as a process to be completed, rather than a continual process. She also argues that universities have a key role to play in the process.²⁰⁵ The current thesis hopes to build on this work and to present a theoretical example of how these ideas might work in practice.

However, several authors caution against a radical or critical pedagogy approach to education. Jay and Graff²⁰⁶ argue that constructing categories such as oppressed, power, powerlessness, false consciousness and consciousness means that Freire has already decided what both the stance of the teacher and their students will be.²⁰⁷ They highlight that issues may arise if a student does not respond to viewing the world in a critical light, as a result, enters into a battle with the teacher and as a consequence receives a lower grade.²⁰⁸ They argue that to counter this staff should become aware of their own potential bias towards a particular method and to keep the connections with students outside of the discourse and take responsibility for negotiating the relationships between the discourse, the individual and the institution to prevent the

²⁰² *Ibid.* 69-71

²⁰³ *Ibid.* 76-78

²⁰⁴ *Ibid.* 78-79

²⁰⁵ *Ibid.* 78-79

²⁰⁶ G Jay and G Graff, A Critique of Critical Pedagogy. in M Bérube and C Nelson (eds), *Higher Education Under Fire: Politics, Economics, and the Crisis of the Humanities* (Routledge 1995)

²⁰⁷ *Ibid.*

²⁰⁸ *Ibid.* 205-206

development of a theoretically unsound position.²⁰⁹ Moreover, the authors emphasise that any act of persuasion is political and must be understood and recognised that politics is not the implementation of a single truth but the negotiation of various truths, meaning that education must take account of those with differing views to engender coexistence and cooperation.²¹⁰ This mirrors Bradney's call for value neutrality.²¹¹ Consequently, they argue that collaboration is important in developing radical or oppositional pedagogies so that students are not cut-off from the institution or the ideas of others.²¹² Conversely, Webb argues that the emergence of new areas of study such as human rights and perspectives on law such as feminism and critical race theory present new candidates for newly emerging legal values.²¹³ For Webb, law can either be seen as a measure of 'goodness' or as a means of realising the values of a society.²¹⁴ Consequently, any question of values must lead to a radical reformulation of the law. This could be useful to advancing the argument for including disability rights issues into legal education as a means of advancing and developing the human rights of people with disabilities. Webb suggests several reforms to place values at the centre of the law school curriculum,²¹⁵ such as acknowledging the importance of prior experience. However, the diverse range of students will make this difficult to achieve in practice. Staff may not have sufficient understanding of all student backgrounds for this recognition to be any more than tokenism, neither helpful nor meaningful.

To conclude this section, it is argued that Critical Pedagogy is the most appropriate way to look at education in this project because it encourages and enables critical engagement with the information presented by their teachers. This then requires that

²⁰⁹ *Ibid.* 208

²¹⁰ *Ibid.* 209

²¹¹ A Bradney, *Conversations, Choices and Chances: The Liberal Law School in the Twenty-First Century* (Hart, 2003) 63-73.

²¹² Jay and Graff n. 206. 210

²¹³ J Webb, 'Taking Values Seriously: The Democratic Intellect and the Place of Values in the Law School Curriculum' (Legal Studies Research Paper No. 2009-06 University of Warwick School of Law) 14

²¹⁴ *Ibid.*

²¹⁵ *Ibid.* 23-7

teachers reflect on their practice which provides an initial foundation around which to build teacher training and overcome issues concerning unchallenged values in liberal education and brings together the other threads in this study, rights, law, disability and legal education.

Variable Factors

It is important to acknowledge that there are other issues identified in the existing literature which will be pertinent to the present thesis. These include the problems identified by Cownie regarding staff training.²¹⁶ This thesis considers issues such as Universal Design²¹⁷ to make content and teaching environments accessible, the need for teacher training and support and the role of the infrastructure of institutions in assisting in achieving these goals and overcoming any potential issues to operationalising ideas put forward in this thesis in the future.

Changes to project design and rationale

This project was initially designed to recruit students with disabilities from 15 different law schools in England based on self-declaration on a questionnaire. The 15 institutions were to be selected by choosing five from the middle, five from the top and five from the bottom in the Complete University Guide after all schools from outside of England were discounted to give a representative spread of institutions, based on age, reputation, teaching focus, endowment, geographical locations and fees. Students were given the option of participating in an in-depth interview which could be oral or written. The questionnaire responses would have been used in the overall analysis to give an indication of the number of students with disabilities studying Law at the selected institutions and to gain a sense as to whether disability coverage in the curriculum was thought to be needed or desirable by both staff and students. Staff

²¹⁶ F Cownie, 'The Importance of Theory in Law Teaching' (2000) 7 *International Journal of the Legal Profession* 236.

²¹⁷ Centre for Excellence in Universal Design, 'The 7 Principles' (universaldesign.ie, 2014) <<http://universaldesign.ie/What-is-Universal-Design/The-7-Principles/>>accessed 14 November 2017

were selected in the same way with the option to give further information about their disability status and own experiences as students with disabilities if applicable, rather than interview. Universities with less than 25% of academic staff holding a PhD were discounted because it is felt that higher numbers of practitioner staff, indicated a vocational rather than academic focus to legal education. Staff with a non-law PhD were discounted from the number of eligible staff. Where no specifics of the PhD qualification were included it was assumed to be in Law.

The original project design was underpinned by Interpretative Phenomenological Analysis (IPA). IPA allows the examination of findings to contextualise them based on the lived experiences of research participants.²¹⁸ I was drawn to IPA's recognition and valuing of inter-subjectivity and its role in creating observable phenomena,²¹⁹ at particular times.²²⁰ Smith et al argue that an awareness of this can add to the analysis, because recognition and understanding of and engagement with the effect of a reader's preconceptions on their interpretation, giving greater insight into both the reader and the writer.²²¹ They argue for a revised form of bracketing to enable readers to separate their previous ideas from a new dialogue.²²² Gadamer argues that the interpreter must be aware of, and engage with their preconceptions during the analysis.²²³ The source material can influence and change the interpreter's preconceptions as the analysis develops, and decisions are made these multiple ways of viewing the world can interact to change interpretations and responses. Gadamer argues that understanding the text, should not be confused with understanding the person.²²⁴ The interpreter is attempting to understand the content rather than the context of what is being said, and the intention behind that content is of secondary importance.²²⁵ Smith et al emphasise the

²¹⁸ J Smith and others, *Interpretative Phenomenological Analysis: Theory, Method and Research* (1st edn, Sage 2009) 1-3.

²¹⁹ M Heidegger, *Being and Time* (Blackwell 1962) 95-102

²²⁰ *Ibid.* 118-122

²²¹ J Smith n. 218. 23-25

²²² *Ibid.* 25

²²³ GH Gadamer, *Truth and Method* (Sheed & Ward 1974) 346-351

²²⁴ *Ibid.*

²²⁵ *Ibid.* 345

importance of ‘the hermeneutic circle,’²²⁶ in facilitating both a specific and general focus on elements of the text enabling a researcher to monitor their subjectivity by continually returning to the overall context during analysis.²²⁷ Though, Husserl argued that it was necessary to bracket previous experiences and perceptions of the world to allow the researcher to truly see the phenomena rather than their perception of it.²²⁸ IPA could enable people to understand their own experiences and could help to remove these experiences from their context thus revealing the experiences of others in different contexts.²²⁹ This highlighted to me the need to strike a balance between acknowledging my own experience whilst not allowing it to ‘speak for others.’ Ponty acknowledged that the lived experience of another can never be fully captured or absorbed by another person but equally that these experiences should not be ignored or overlooked.²³⁰ Heidegger argues that what a researcher notices is based on their own experience²³¹ and that this can stilt analysis and cloud their perceptions.²³² When considering disability, it is important to recognise that the barriers facing and the experiences of those with hidden disabilities may not be visible withing ‘the natural attitude,’²³³ so it is important to resist using pre-existing categorisations and to reflect on when barriers may occur when disability is considered, such as accessing books from the library or interactions with other students and the student with a disability’s view of the world.

Ponty’s conception of phenomenology focusing on the actor’s physicality, with the body as the means of communicating with the world²³⁴ could have brought an

²²⁶ J Smith n. 218. 27

²²⁷ *Ibid.*

²²⁸ E Husserl, Phenomenology. Translated by R E Palmer, *Encyclopaedia Britannica* (1927) Para. 3 *The Self-contained Field of the Purely Psychological. --Phenomenological Reduction and True Inner Experience.*

²²⁹ *Ibid.*

²³⁰ M Merleau Ponty, *The Phenomenology of Perception* (Routledge and Kegan Paul 1962)92-95

²³¹ Heidegger n. 219. 189-195

²³² *Ibid.* 192

²³³ *Ibid.*

²³⁴ Merleau Ponty n.230. 92

interesting insight to the empirical project. Ponty's argument that the perception of the other originates from a person's sense of embodiment means that failing to provide students with disabilities with multi-faceted representative examples of their lived experience within the legal curriculum may prove to be isolating. They would be continually represented with images of the 'other' whilst students without disabilities would be presented with images of like and have a greater connection to the curriculum. Although it could be argued that students without disabilities may be disconnected from the lived experiences of those with disabilities if equally representative examples are used, both groups will be equally disconnected but represented at the same time.

Reflections on the recruitment process

Other researchers²³⁵ have identified the difficulty that students can face in claiming a disabled identity in order to access support due to the fear of negative perception. Goode highlights that students with disabilities can be difficult to recruit for research as they do not want to be seen as making a fuss.²³⁶ In my approach to students I did not explicitly declare my disability, though I did refer to 'my support worker' and that transcripts would be transcribed by a third party due to the time it would take me. On reflection, I have felt more conspicuous as an electric wheelchair user, of late, due to media dialogues around disability²³⁷ and particularly Personal Independence Payments

²³⁵ M Madriaga, 'Enduring Disablism: Students with Dyslexia and their Pathways into UK Higher Education and Beyond' [2007] 22(4) *Disability and Society* 405 and M Onnely and K Brocklemann, 'Out of the Disability Closet: strategic use of perception management by select university students with disabilities' *Disability and Society* [2003] 12, KL Lightner and others, 'Reasons University Students with a Learning Disability Wait to Seek Disability Services' [2012] 25(2) *Journal of Postsecondary Education and Disability* 145-146 and Disability Rights UK, 'Telling people you're disabled: clear and easy guide for students' (*Disabilityrightsuk.org*, 15 May 2017) <<https://www.disabilityrightsuk.org/telling-people-you%E2%80%99re-disabled-clear-and-easy-guide-students>> accessed 2 August 2018

²³⁶ See Goode discussion, p. 243

²³⁷ B Baumberg Geiger, 'Benefit 'myths'? The accuracy and inaccuracy of public beliefs about the benefits system' [2016] CASE/199(0) Centre for Analysis of Social Exclusion London School of Economics <<http://sticerd.lse.ac.uk/dps/case/cp/casepaper199.pdf>> accessed 28 June 2018

(PIP)²³⁸ as well as being a student accessing DSA support²³⁹ to complete my PhD. However, I did not consider that my research participants may have experienced similar feelings and might have been reassured to know of my status. Equally, I did not want my status to over-influence their decision to be involved, which came from my desire to maintain a value-neutral stance in line with my views on liberal education. This reticence and my failure to consider its impact during analysis as part of the desk-based project, could be said to be illustrative of Harding's discussion of Standpoint Theory in Social Sciences research. Attempting to maintain value neutral approaches to the research meant that I was perpetuating exclusionary practices and marginalising voices, by attempting to hide my own.²⁴⁰

Harding argues that innate understandings should be embraced in methodological approaches rather than suppressed because they can reveal more about or additional problematic social phenomena which enriches research.²⁴¹ Whilst Standpoint Theory and discussion of subjective experience and the use of an embodied methodology such as IPA, have value for a future, separate project that engages with individuals in specific universities and contexts to access their perspectives and experiences of disability and law and legal education, it would be inappropriate to use in the theoretical project due to the difficulty of relativism. Relativism is a frequent critical charge made about

²³⁸ Gov.UK, 'Personal Independence Payment (PIP)' (*Benefits*, 28 June 2018) <<https://www.gov.uk/pip>> accessed 28 June 2018 and H Dixon, 'The move from DLA to PIP: Controversial Government plans take effect' (*The Telegraph*, 08 Apr 2013) <<https://www.telegraph.co.uk/news/politics/9978820/The-move-from-DLA-to-PIP-Controversial-Government-plans-take-effect.html>> accessed 28 June 2018 and Age UK, 'Disability Living Allowance' (*Information and Advice*, Jun 21 2018) <<https://www.ageuk.org.uk/information-advice/money-legal/benefits-entitlements/disability-living-allowance/>> accessed 28 June 2018

²³⁹ D Willetts, 'Higher education: student support: changes to Disabled Students' Allowances (DSA)' (*Department for Business, Innovation & Skills and The Rt Hon David Willetts*, 7 April 2014) <<https://www.gov.uk/government/speeches/higher-education-student-support-changes-to-disabled-students-allowances-dsa>> accessed 18 October 2016 and S Hobbie and P Bolton, 'House of Commons Library' [January 2016] Briefing Paper Number 7444 Reform of Disabled Students' Allowances in England 12.

²⁴⁰ S Harding, How Standpoint Methodology Informs Philosophy of Social Science. in S Turner and P Roth (eds), *The Blackwell Guide to the Philosophy of the Social Sciences* (Blackwell Publishing 2003) 294-299

²⁴¹ *Ibid.* 303

standpoint theory²⁴² and whilst defenders such as Harding have sought to argue that relativism exists in a number of research areas or social decision making and that these areas such as medicine, are not automatically discounted due to their relativist positions.²⁴³ Whilst this may be true in certain circumstances, the relationship between relativism, morality, disability, charity and the concept of social justice and an assumption of social mindedness to drive change and the law and the development of disability theory generally means that explorations of relativist arguments without sufficient and nuanced guidance of the changes in attitudes and approaches over time and the legal framework's role in achieving this could be potentially damaging. It could lead to one viewpoint being prioritised over others which could lead to students having a monotheistic understanding of disability and as such mean that they would lose the ability to critique the legal framework and its role and goals which would leave them vulnerable to experiencing legal education not as a liberal education but as indoctrination.²⁴⁴ Accordingly, the prototype curriculum and arguments made in the thesis will focus on value neutrality and liberally reasoned critical engagement with legal ideas and constructs to increase legal consciousness to make reception and implementation more likely and applicable to other areas of the curriculum or experiences of other groups.

It is arguable that the difficulties I faced in designing an accessible project could highlight the difficulties facing researchers and research participants with disabilities generally. For example, my ethics approval was a protracted process because I had to design support worker agreement forms where no pro-forma existed and these had to be newly assessed by the Committee. This meant that my approach timeline was pushed back meaning that participants were contacted during exam periods which

²⁴² S Harding, Introduction: Standpoint Theory as a Site of Political, Philosophic and Scientific Debate. in S Harding (ed), *The Feminist Standpoint Theory Reader: Intellectual and Political Controversies* (Routledge 2004)10-12

²⁴³ *Ibid.*

²⁴⁴ See Theory Chapter, Why Liberal Education?

negatively effected uptake. Additionally, venues needed to be easy to travel to and accessible as highlighted by my Masters research²⁴⁵ and recent court cases.²⁴⁶ Finally, to maintain confidentiality and boundaries I only had university email addresses which meant it was difficult to contact students outside of term time. It is arguable that my experiences and what I learned from them are demonstrative of Merleau Ponty's²⁴⁷ arguments of the importance of considering embodiment in terms of interaction with the world and what this reveals about the existence of certain phenomena such as disability. This also highlights the potential and need for a future standalone empirical project to build upon the findings in the thesis as a theoretical prototype curriculum. To ensure representation in the absence of the empirical project, this thesis discusses a range of documents including accounts by those with disabilities as well as reflection on the impact of my own disability status on my analysis and discussion. In childhood, my education was medical. This led to the suppression of my identity as a 'disabled person'. Norman Kunc identified similar issues during his school and rehabilitation experiences,²⁴⁸ highlighting the importance of anybody engaging in research relating to disability or advocacy not becoming oppressors themselves.²⁴⁹ The transition into mainstream was difficult at both primary and secondary levels and created a sense of failure due to disability. As an undergraduate at an historic university, where access issues and consequential exclusion from parts of the student experience made me view my disability negatively once again. During the analysis phase of the PhD, this background experience began to influence my assessment of the human rights

²⁴⁵ Abigail Pearson, 'A Comparative Study of "Reasonable Adjustment" and "Undue Burden" Provisions for People with Disabilities Accessing Public Transport Services under European Union Law' (Keele University September 2014)

²⁴⁶ *Paulley v First Group plc* [2013] Leeds County Court Case 2YL85558. *First Group plc v Paulley* [2014] COA EWCA Civ 1573. *First Group plc (Respondent) v Paulley (Appellant)* [2017] UKSC 4.

²⁴⁷ Merleau Ponty n.230.92

²⁴⁸ Kunc in MF Giangreco, "The stairs didn't go anywhere!": A Self-Advocate's Reflections on Specialized Services and their Impact on People with Disabilities. in M. Nind, J. Rix, K. Sheehy, & K. Simmons, K. (Eds.), *Inclusive education: Diverse perspectives* (David Fulton Publishers in Association with The Open University 2004) 32-42

²⁴⁹ *Ibid.* 40-41

framework. This was frustrating because there was a lack of critique of the content of the framework and its interpretation in the literature, whilst there were a number of sources advising against optimism in the implementation of the CRPD at the supranational level. Moreover, there was a lack of critique and reverence for the long established concept of reasonable adjustment, which appeared not only to have surpassed its utility but now actively stalling change. The evolution of my own understanding and relationship with disability was shaped by experiences outside of legal education. My experiences of legal education and a growing understanding of the relationship between disability and law to either compound or overcome difficulties encouraged me to add my own voice as a person with a disability to discussions both formally and informally and to claim my identity. This is something that I hope may be mirrored in the experiences of others, should discussions of disability be included in liberal, legal education in the future. I have included others voices where possible, by using sources such as records of drafting discussions for the CRPD,²⁵⁰ Parliamentary evidence,²⁵¹ NGO²⁵² and DPO²⁵³ discussion papers, work by academics with disabilities and media sources,²⁵⁴ but these are only some of the voices of people with disabilities. Therefore, it is crucial that any future research in this and similar areas, including but not limited to my own, implements high standards of accessibility and explores ways of increasing avenues of participation for those who may not engage with traditional avenues such as NGOs, DPOs and to encourage research practices which value standpoint based approaches. This will help to ensure that people with disabilities are able to fully engage with both the academic research and social policy landscapes to safeguard their representation.

²⁵⁰ See for example Trömel discussed in CRPD Chapter, 136

²⁵¹ See for example discussion of House of Lords Report re the Equality Act in Introduction, 7 and House of Commons documents, 201

²⁵² See for example discussion of Leonard Cheshire Report beginning in the Introduction, 6

²⁵³ See for example written evidence from Disability Rights UK discussed in the Introduction, 7

²⁵⁴ See for example Brexit chapter Disability News Service, 170

Despite this, I do not consider my research as emancipatory research²⁵⁵ because I find its inherently political nature²⁵⁶ and focus on radical transformation²⁵⁷ difficult to reconcile with the liberal education belief that people cannot be made socially minded.²⁵⁸ I felt that any attempts to do this would simply be another form of indoctrination.²⁵⁹ Moreover, I find the emancipatory paradigms insistence on adherence to the social model of disability²⁶⁰ difficult to support because I feel that this is just as disempowering as other approaches because people must wait for society to change in order to be 'liberated'. Barnes is critical as to whether or not empowerment can be achieved using such methods anyway.²⁶¹ This also comes across in continual references to it being utilised to give Disabled Peoples' Organisations a voice and a chance to dialogue with the academy and policy makers, because it assumes that all people with disabilities have an affinity with and wish to be involved with DPOs,²⁶² which as Enns²⁶³ highlights is not always possible due to a variety of factors.

²⁵⁵ See for example, C Barnes, "Emancipatory' Disability Research: project or process? Public Lecture at City Chambers, Glasgow, on 24 October 2001

²⁵⁶ M Oliver, Emancipatory Research: Realistic goal or impossible dream?. In C Barnes and G Mercer (eds), *Doing Disability Research* (The Disability Press 1997), J L Macbeth, 'Reflecting on disability research in sport and leisure settings' [2010] 29(4) *Leisure Studies* 483, M Hammersley, *The Politics of Social Research* (SAGE Publications 1995) vii-ix and J Bergold and S Thomas, 'Participatory Research Methods: A Methodological Approach in Motion' [2012]13(1) *Forum: Qualitative Social Research* <<http://www.qualitative-research.net/index.php/fqs/article/view/1801/3334>> accessed 3 August 2018. 3.1

²⁵⁷ V Finkelstein, 'Book Review' [1999] 14(6) *Disability and Society* 859-860

²⁵⁸ G Ferris, 'Values ethics and legal ethics: the QLD and LETR Recommendations 6, 7, 10, and 11' [2014] 48(1) *The Law Teacher* 25, 29

²⁵⁹ P Freire, *Pedagogy of the Oppressed: 30th Anniversary Edition* (Continum 2000) 72-80

²⁶⁰ G Mercer, From Critique to Practice: Emancipatory Disability Research. in C Barnes and G Mercer (eds), *Implementing the social model of disability: theory and research* (The Disability Press 2004)

²⁶¹ C Barnes, 'Emancipatory' disability research and special educational needs. in L Florian (ed), *The Sage Handbook of Special Education* (London:Sage 2007) pp 233-246, 15

²⁶² E Stone, 'Book Review' [1999] 14(6) *Disability and Society* 873

²⁶³ See 'Limits of involvement with NGOs' discussion in CRPD Chapter particularly H Enns, 'The Role of Organizations of Disabled People: A Disabled Peoples' International Discussion Paper' (<http://www.independentliving.org>, 25 July 2016)<<http://www.independentliving.org/docs5/RoleofOrgDisPeople.html>> accessed 25 July 2016, R Lang, The Role of NGOs in the Process of Empowerment and Social Transformation of People with Disabilities. in M Thomas, MJ Thomas (Eds) Selected Readings in Community Based Rehabilitation Series 1, Bangalore, 2000. 15 and F Bowe, "Who Represents Disabled People?" In 1980 World Congress Plenary Session Papers, 13-15. Edited by Rehabilitation International, New York: Rehabilitation International, 1980. 126

Consequently, the project transformed into desk based research, focusing on doctrine, policy documents and NGO and DPO reports.²⁶⁴ The next stage of development from formulating and asking the initial questions in this thesis, to the implementation of the planned empirical project and conversation with people with disabilities more generally could be pursued as a separate project. This presents avenues for further work in the changing climate of legal and higher education in England and overcomes any limitations of the desk based project. Similar work could be extended in the future to legal education in other areas of the UK and to post-graduate education.

Methodology

Critical Discourse Analysis (CDA)

For the desk based project, CDA offers a broad approach to examining inequality within society by analysing the use of language by various groups to either perpetuate or challenge the status quo,²⁶⁵ free from a specific theoretical framework.²⁶⁶ It recognises that power relations and demonstrations are changeable and discursive.²⁶⁷ There are examples where certain groups of people with disabilities have achieved power and recognition both in relation to the law and society, such as forming the social model response to disability through the formation of the UPIAS²⁶⁸ and the development of the Disability Studies academy, in response to oppressive research

²⁶⁴ See for example Dr L Vanhala, 'The Baring Foundation: Working Paper No 2 on Better Use of the Law by the Voluntary Sector: Framework for Better Use of the Law by the Voluntary Sector' (*baringfoundation.org.uk*, August 2016) <<http://baringfoundation.org.uk/wp-content/uploads/2016/07/Framework-for-better-use-of-law-WPaper2-1.pdf>> accessed 16 June 2017

²⁶⁵ D Hyatt, 'A Critical Literacy Frame for UK secondary education contexts' [2005] 39(1) *English in Education* 43

²⁶⁶ TA Van dijk, Critical Discourse Analysis. in Schiffrrin and others (eds), *The Handbook of Discourse Analysis* (Blackwell Publishers 2001) 352-353

²⁶⁷ NL Fairclough and R Wodak, Critical discourse analysis. in TA van dijk (ed), *Discourse Studies A Multidisciplinary Introduction, Discourse as Social Interaction* (Sage 1997) 258-84

²⁶⁸ T Shakespeare, *Disability Rights and Wrongs* (1st, Routledge, Oxon 2006). 11-14

J Hunt, 'A revolutionary group with a revolutionary message' (*disability.co.uk*/, 2001) <<http://pf7d7vi404s1dxh27mla5569.wengine.netdna-cdn.com/files/library/Hunt-J-a-revolutionary-group-with-a-revolutionary-message.pdf>> accessed 8 August 2017

practices.²⁶⁹ However, it is necessary to be able to identify and analyse instances where this may have helped to create a new type of oppression. This reciprocal approach, which focuses on both micro and macro examples of power and oppression, centralises empowerment within analysis, thus overcoming the elements of fatalism, present in other approaches.²⁷⁰ Secondly, it allows researchers to contextualise certain social phenomena such as disability and experiences of impairment, within particular social, cultural and historical context.²⁷¹ This key to analysing the legal response to disability and the development of the human rights framework, because a panoptic view across various times and cultural shifts facilitates a critique of its development and explain momentum. Thirdly, it enables researchers and hopefully students to interpret and explain social phenomena rather than simply accepting that they exist, which mirrors the goal of the critical theories that blend to create the perspective of Proactive Critical Citizenship advanced in this thesis. CDA incorporates self-reflexivity as a means of positioning it within the research methods landscape. This makes it an even stronger methodology for the thesis; it requires both students developing Proactive Critical Citizenship and myself as a researcher to consider why certain elements are prominent in analysis based on personal experience, guarding against reification in the analysis, despite analysing it in the source documents.²⁷² As a researcher with a disability, I had to engage with my own experiences, however, the full impact of this did not register until writing up. Having experienced education both in the segregated and integrated systems between the late 80's and late 2000's has shaped my knowledge of and understanding about the transformative potential of communication through the discourse of rights to advance both my own and society's understanding of disability.

²⁶⁹ V Finkelstein, *Emancipating Disability Studies*. in T Shakespeare (ed), *The Disability Reader Social Sciences Perspectives* (Continuum 1998) 28-49

²⁷⁰ T.A. Van dijk n. 261. 354

²⁷¹ See Fairclough and Wodak n. 262.

²⁷² See Van dijk n.261, 358 and NL Fairclough, *Critical Discourse Analysis: The Critical Study of Language* (Longman Group 1995) 217-218

Whilst the methodology used in this research of Critical Discourse Analysis encourages researchers to acknowledge and work within the bounds of their personal experience and context, in terms of the present research project, it must be acknowledged that in as much as it gives the author insight into some of the discourses, dialogues and effects of and present within the legislation, is a limitation. My perspective as a person with a disability who came to the study of disability rights and the law after an informative experience of education, both at secondary and further levels and higher levels gave me the perspective of both ignorance of but anxiety to learn about and have society understand and validate their rights. I acknowledge that access to higher education may have increased its importance and value in my eyes which may not be the case for other people with disabilities. However, the recent government reports, Leonard Cheshire²⁷³ findings and work by Vanhala²⁷⁴ suggest that increased representation of the issues affecting people with disabilities when interacting with legal services and society generally as a result would be welcome.

This thesis argues that CDA has the potential to both highlight the need for Critical Literacy, by demonstrating the disconnect between the role of education in the human rights framework around disability and the reality; but also to highlight the need for students to become critically literate. This will ensure that they are able to decode the information presented, to distinguish value judgement from reason to formulate their own views, to be able to engage fully with a value neutral, rather than value free,²⁷⁵ liberal legal education. Hyatt has devised a framework to introduce critical literacy into secondary school English classes. Though this is aimed outside of higher education, it offers a flexible framework to build analysis around, which can be altered depending level and context. Its main features will be used in this thesis to demonstrate the issues

²⁷³ Leonard Cheshire, 'Rights and reality Disabled people's experiences of accessing goods and services Executive Summary'

<<https://www.leonardcheshire.org/sites/default/files/Rights%20and%20reality%20-%20executive%20summary.pdf>> (accessed 22 May 2017),

²⁷⁴ L Vanhala, *Making Rights a Reality? Disability Rights Activists and Legal Mobilization* (Cambridge University Press 2011) 1-12 and 39-40

²⁷⁵ I Shor, 'What is Critical Literacy?' [1999] 1(4) *Journal of Pedagogy, Pluralism and Practice* 1-8

present in the main themes of analysis by examining: Pronouns, Passive/Active Forms, Time -Tense and Aspect, Adjectives, Adverbs, Nouns, Semantic Prosody, Presupposition / Implication, disability and intertextuality, regarding documents outside of statutes.²⁷⁶ Sources analysed include: primary sources, legislation and supplementary policy documents such as Hansard and House of Commons, House of Lords, UN and EU documents about specific pieces of legislation. Secondary sources, including information produced by and about the Disabled Peoples' Movement, DPO and NGO resources, drafting submissions in regards to legislative developments from both individuals and representative organisations and wider social sources such as university syllabi and charity campaigns. Tertiary sources relate to academic literature concerning both primary and secondary sources.

The analysis organises around themes drawn from the human rights approach to disability. Dignity, includes both direct references to dignity in terms of the language used but also a representation of dignity by using other language which charts the development of the changing status of people with disabilities. These highlight the importance of and need for education about the rights of people with disabilities to provide clear evidence as to where this objective is either succeeding or failing in practice. It also demonstrates the emblematic utility of dignity as an anchor point and statement of intent regarding the protection of other rights in law, as highlighted by the literature.²⁷⁷

Participation is used rather than autonomy, due to a number of issues relating specifically to disability. Firstly, autonomy is a loaded term within the classical rights literature and within disability discourse generally because traditional conceptions of it can exclude people with certain types of impairment.²⁷⁸ Secondly, participation is

²⁷⁶ See Hyatt n. 260, 47

²⁷⁷ See Dignity discussion in Literature Review.

²⁷⁸ See for example G Quinn, Rethinking personhood: New Directions in Legal Capacity Law & Policy. Or How to put the 'Shift' back into 'Paradigm Shift' (1st, University of British Columbia, Vancouver, Canada 2011)

preferred in this context because inclusive definitions related to autonomy which focus on personhood emphasise the importance of participation in achieving full personhood within society. Thirdly, participation covers a range of engagement and inclusion which can be grouped together and discussed individually under this theme heading. Jones defines inclusion as the principle that all are able to participate fully in all aspects of society, that all have the same rights and responsibilities as well as something to contribute. She argues that it is ‘the principle that demands valued recognition of all people and the entitlement of all to meaningful interaction, involvement and engagement with every part of the complex multifaceted societies in which we live.’²⁷⁹ Moreover, whilst it is the right of the individual it is the responsibility of society as a whole as it requires the removal of barriers and changes in attitudes.²⁸⁰ This definition is the rationale for analysing participation both in the legal framework documents concerning legal education. In the principles laid out by Jones, there are three elements to her vision of inclusion: a non-discriminatory attitude towards people with disabilities, the guarantee of access to participation in every area of life and the facilitation of people with disabilities to limit the impact of disability.²⁸¹ Jones differentiates between inclusion, integration and mainstream arguing that inclusion makes much greater demands on the system because within the educational context particularly, mainstreaming makes no demands for equality, but rather, focuses on the needs of people with disabilities being tolerated, whereas integration requires evidence of acceptance and a commitment to remove barriers.²⁸² Education is viewed as a means to advance, promote and protect the rights of people with disabilities differentiated from references to the need to provide education as a practice as part of the human rights framework. Other issues will be dealt in the fourth element of the discourse analysis which will broadly be defined as thematic issues. This will focus on the barriers

²⁷⁹ M Jones, Inclusion, Social Inclusion and Participation. in Rioux and others (eds), *Critical Perspectives on Human Rights and Disability Law* (Martinus Nijhoff Publishers 2011) 57

²⁸⁰ *Ibid.*

²⁸¹ *Ibid.* 58

²⁸² *Ibid.* 63-64

identified within the discourse to realising the rights or access to education given by the content of the human rights framework for a number of reasons. These include: economic limitations, difficulties in securing access in practice, status, reasonable adjustment and limits of legislative process to produce change.

This framework is applied within the parameters the 1969 Vienna Convention on Law Treaties Articles 31 and 32,²⁸³ that terms of a treaty are interpreted in good faith and that over literal interpretation of words is prevented by focusing on context and the purpose and goal of the treaty.²⁸⁴ Villiger argues that there is a presumption that treaty terms have an explicit meaning and that those reading the treaties are required to act honestly and fairly.²⁸⁵ Ordinary meaning is the starting point for interpreting treaty provisions,²⁸⁶ where special meanings exist, context provides meaning.²⁸⁷ Interpretation should match international law or objectives.²⁸⁸ This thesis acknowledges the conventions of the Vienna Treaty, but where ordinary meanings have implications for the impact of disability legislation; these will be considered critically to prevent good faith from being used as a shield against criticism. This will ensure that there is reciprocal good faith between those interpreting the treaties and documents discussed and those who are hoping that the development of the treaties will deliver the social change or support.

Language

This thesis uses person first language around disability and Critical Disability Theory, save for when primary documents use it. As a researcher with a disability I prefer not

²⁸³ M E Villiger, The Rules on Interpretation: Misgivings, Misunderstandings, Miscarriage? The 'Crucible' Intended by the International Law Commission. in E Cannizzaro(ed), *The Law of Treaties Beyond the Vienna Convention* (Oxford University Press 2011) 105-122

²⁸⁴ *Ibid.* 108-113

²⁸⁵ *Ibid.* 109

²⁸⁶ *Ibid.*

²⁸⁷ *Ibid.* 110-112

²⁸⁸ *Ibid.* 117-118

to use the past participle as it suggests stasis in terms of perception and social attitudes towards disability and places the impairment before the person.

Conclusion

In conclusion, the thesis will apply the critical theory approaches as synthesised in this chapter to build the argument for developing Proactive Critical Citizenship as an element of undergraduate liberal legal education to advance critical understanding of Human Rights and legal consciousness of the rights of people with disabilities, highlighting strengths and weaknesses in the legislative framework concerning disability at international, national and supranational levels, in each of the proceeding chapters. The critical perspective and skills of analysis demonstrated in the thesis would be passed to students to enable them to become Proactive Critical Citizens.

Chapter 3: The International framework and the CRPD

This chapter applies the concept of Proactive Critical Citizenship in Liberal Legal Education to the international legal framework concerning disability and rights. There are several themes throughout the supranational human rights framework which are key to building the argument that integrating discussions about the rights of people with disabilities into liberal legal undergraduate education to develop Proactive Critical Citizenship in society to advance the rights of people with disabilities in practice. The first is the importance of status and recognition to the development and enjoyment of rights. The second is the role of participation and education as an element of participation in achieving rights in practice. The chapter will explore several thematic issues with the potential to limit the scope of the aim of the framework in practice. These include participation at drafting level to Non-Governmental Organisations (NGOs) or Disabled Persons Organisations (DPOs) and continued reference to economics which limits effectiveness in practice and undermines recognition of status. This thematic approach will synthesise the framework at the supranational, international and national levels to highlight its strengths and weaknesses to develop a responsive and active framework. This is necessary to drive and monitor change making Proactive Critical Citizenship a universal process. Finally, the chapter will consider the integration in practice by conducting a thematic analysis of cases as to illustrate issues in practice to show why they exist and critique is important.

Dignity

Dignity is a foundational concept within Proactive Critical Citizenship, functioning as an emblem¹ of belonging and regard, both within society and law. This was emphasised by the Universal Declaration of Human Rights (UDHR):

¹ See 'Dignity' on Literature review.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.² This statement of dignity mirrors Aquinas' proposition that dignity has an individual value by virtue of existing as part of God's or natural law.³ Despite this, as the international human rights framework began to expand, this inclusivity was lost as subsequent treaties⁴ began to delineate groups of characteristics such as age and sex but not disability. People with disabilities were covered by the reference to people of 'other status'.⁵ This both ignores and problematizes disability in the human rights framework. If disability is ignored, it can increase barriers to people with disabilities accessing services and society, leading to an increase in discrimination. Moreover, there is an inherent suggestion that it is unworthy of mention and fails to understand that disability can be part of intersectional discrimination.⁶ This is reminiscent of the medical⁷ rather than social approach to disability.⁸ Article 25, Paragraph 1 of the UDHR collocates disability with tragedy: Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age [...].⁹ References to health care and social services demonstrate a paternalistic focus and disability rights as the gift of those without disabilities, rather than a natural consequence of their status as citizens. The CRPD represents a major step forward in the legislative response to disability as the first formal recognition of the human rights

² Universal Declaration of Human Rights 1948. Article 1

³ T Aquinas translated by R McInerney, 'Commentary on the Sentences' ([Http:// dhsprory.org](http://dhsprory.org), 1998) <<http://dhsprory.org/thomas/Sentences.htm#1>> accessed 21 October 2016

⁴ International Convention on the Elimination of All Forms of Racial Discrimination 1965 Here disability not included directly, but neither is other status. (ICERD), International Covenant on Civil and Political Rights 1966 (ICCPR) and International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR).

⁵ ICESCR General Comment No. 5

⁶ K Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics and Violence against Women of Colour' [1991] 43(0) Stanford Law Review 1242-1244

⁷ H.J. Stiker, *A History of Disability* (University of Michigan 1999), 124

⁸ T Shakespeare, *Disability Rights and Wrongs* (1st edn., Routledge, 2006).15-19

⁹ Universal Declaration on Human Rights 1948

of people with disabilities as a distinct group.¹⁰ The recognition of dignity is a central tenant of the CRPD.¹¹ The recognition of the dignity of people with disabilities is an important step in strengthening and implementing the human rights framework because explicitly linking the two concepts together provide an anchor for other attendant rights such as independence and participation as laid out in the structure and content of the CRPD. Moreover, in terms of the present research, this recognition of dignity is a key foundation to the construction and promotion of the idea of Proactive Critical Citizenship. It demonstrates both to people with disabilities and those without disabilities that people with disabilities are equal rights holders by virtue of their existence, rather than any other threshold, without exception.

However, the UDHR has an inclusive definition of autonomy. It is expressed in language of 'reason' and 'conscience' and the need to act 'towards each other in the spirit of brotherhood.'¹² 'Reason,' prizes logic over emotional reaction.¹³ The need to act in the spirit of brotherhood connects the individual and society, suggesting that the influence of others in decision making was not only expected but mandated to ensure that a relationship between society and the individual developed to enable both to function to their fullest extent. Reference to conscience or 'a person's moral sense of right and wrong, viewed as acting as a guide to one's behaviour'¹⁴ is an individual conception of morality, which is likely to be influenced by society but is not dependent on conforming to a set threshold. These elements present no barriers to people with disabilities being autonomous.

¹⁰ See 'Disability' on Literature review.

¹¹ United Nations Convention on the Rights of People with disabilities 2006 Preamble Article (a)

¹² UDHR, n. 2

¹³ *OED* (3rd edn, Oxford University Press 2010)

¹⁴ *Ibid.*

Status

As disability specific declarations began to emerge, this inclusive approach to autonomy degrades. The Declaration on the Rights of Mentally Retarded Persons,¹⁵ like the CRPD,¹⁶ refers to both positive and negative human rights for persons with psychosocial impairments. However, it contains provisions denying rights to people with disabilities based on impairment status. This is in contrast to articles protecting both positive and negative human rights which seem to foreshadow the modern human rights approach to disability. People with disabilities are presented as separate entities who are only entitled to their rights if they can prove that they can exercise them correctly. Quinn has identified the difficulty of this argument as it is not only people with disabilities who are liable to make what many would consider poor decisions but that there would be no supported argument for the removal of their access to rights.¹⁷

People with disabilities are compared with ‘other human beings’¹⁸ which by implication sets them apart as less deserving of access to rights. The determiner ‘the’ mentally retarded person compounds this separation. This exemplifies Adorno’s identity thinking which categorises people in terms of one characteristic rather than seeing the entirety of the person consequently misrepresenting them.¹⁹ Lawson has highlighted these negative aspects of the Declaration, but without considering the stigmatising effect of separating different types of impairment.²⁰ The separate declaration referring to ‘Mentally Retarded Person’ rather than incorporating all people with disabilities into the later declaration suggests a need for separation so as not to transfer stigma unjustly to another group. Though the Declaration of Disabled Persons refers to the ‘physically

¹⁵ Declaration on the Rights of Mentally Retarded Persons 1971

¹⁶ UNCRPD, n. 11.

¹⁷ G Quinn, ‘Rethinking Personhood: New directions in Legal Capacity Law and Policy. Or how to put the shift back into ‘Paradigm Shift’ (1st University of British Columbia, Vancouver Canada, 2011).

¹⁸ Declaration n. 15. s1

¹⁹ H Brunkhorst, *Adorno and Critical Theory* (University of Wales Press, Cardiff 1999) 1-5

²⁰ A Lawson ‘The United Nations Convention on the Rights of Persons with Disabilities: New Era or False Dawn?’ [2007] 34 *Syracuse J Int’l L & Com* 580

and mentally disadvantaged.²¹ The Declaration on the Rights of Mentally Retarded Persons refers fleetingly to dignity in the preamble and does not specifically ascribe the right of dignity to mentally retarded persons.²² Both declarations contain repeated references to the notion of ‘normal’ life and in the case of the Rights of Disabled Persons the ‘normal’ individual.²³ These statements are indicative of the need for people with disabilities to reach a standard defined by people without disabilities and are indicative of the medical model approach to disability that people should strive to meet this standard and that the ability to do this precedes their access to rights. Additionally, the ‘mentally retarded person is permitted a decent standard of living’²⁴ which is indicative of a bare minimum standard so as not to shock others²⁵ rather than ensuring a real sense of enrichment and involvement. Moreover, both declarations appear to link the idea of dignity and living in the community through social integration as being predicated on an idea of normality which undermines dignity through the imposition of conditions by the dominant group because the idea of what is normal is based upon the most frequently occurring standards of patterns or behaviour but what may be seen as normal for people without disabilities would not be normal for people with disabilities. For example, at the most basic level, most people with disabilities may find it abnormal that people without disabilities appear to ambulate and move in a homogenised way which would not be the case for many people with disabilities.

The World Programme of Action (WPA)²⁶ undermines the status of disability because it states that it ‘is to promote effective measures for the prevention of disability and rehabilitation’,²⁷ mirroring a medicalised view of disability. Placing discussions about prevention and rehabilitation before rights there is an unpalatable undertone that

²¹ Declaration on the Rights of Disabled Persons 1975 s. 4

²² Declaration n. 15. Preamble

²³ Declaration n. 15 s. 1, 3 and 9 and Declaration n. 21. Preamble and s. 4

²⁴ Declaration on the Rights of Mentally Retarded Persons 1971 (3)

²⁵ OED (3rd edition, Oxford University Press, 2010)

²⁶ United Nations, *United Nations Decade of Disabled Persons 1983-1992 World Programme of Action concerning Disabled Persons* (1982) Para. 1(a)(1)

²⁷ *Ibid.*

people with disabilities can only expect access to their rights if they submit to correction. There is an implication that future generations would be better off without disability. This is disappointing because the World Programme of Action presented formal human rights recognition of disability by the UN, moving on from the medical and charity approach.²⁸ Discourses of prevention and rehabilitation offer the opportunity for students to discuss changes in socio-legal contexts, discussions concerning medical treatment, consent and the right to life for people with disabilities. The proposed Supplement to the Standard Rules in 2002, stated that:

‘[...] the term “prevention”, as outlined in the Standard Rules, must never be used to justify the denial of the right to life or to equal participation in society for persons who have disabilities.’²⁹

Davis³⁰ considers the development of the ideas that the physical health of the nation began to be seen as indicative of the moral and social health of the nation and consequently the eugenics movement began to emerge.³¹ In the 19th century disability became associated with other supposedly undesirable traits such as criminality and poverty.³² A president of the University of Wisconsin after World War One declared that “we know enough about eugenics so that if the knowledge were applied, the defective classes would disappear within a generation.”³³ Contemporarily, Barnes and Oliver refer to the seeming continuing acceptability of the prenatal screening and abortion of unborn children deemed handicapped in many countries including the UK and growing support for legally sanctioned assisted suicide for people with degenerative conditions.³⁴ These examples illustrate how legislative discourses both

²⁸ *Ibid.*

²⁹ UNGA Monitoring the implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, fortieth session (12-22 February 2002) E/CN.5/2002/4

³⁰ LJ Davis, Constructing Normalcy: The Bell Curve, the Novel, and the Invention of the Disabled Body in the Nineteenth Century. in LJ Davis (ed), *The Disability Studies Reader* (Routledge 2006) 3-16

³¹ *Ibid.* 8-9

³² *Ibid.* 9

³³ *Ibid.* 9

³⁴ C Barnes and M Oliver, *The New Politics of Disablement* (2nd edn, Palgrave Macmillan 2012) 96

undermine and prevent Proactive Critical Citizenship at both society and individual levels. Drawing attention to these developments is a critical part of inclusive liberal legal education, because it allows students to develop a consciousness as to the effect of these discourses and how they may be challenged in the future. That similar issues occur across documents suggests that this weakness was not sufficiently addressed before the CRPD.

Participation

If citizens cannot participate in their societies they will be unable to critique the running of that society and to notice where weaknesses occur and to form and express their opinions. Civil rights to participation need to be protected. In the earlier human rights documents there was a sharp division between civil and political rights. The UDHR focuses entirely on first generation political rights and does not consider civil rights. The International Covenant on Civil and Political Rights (ICCPR) deals with both civil and political rights, people with disabilities were not explicitly mentioned in the document. In 1966, Jacobus tenBroek wrote:

[...] nothing could be more essential to personality, social existence, economic opportunity-in short, to individual well-being and integration into the life of the community-than the physical capacity, the public approval, and the legal right to be abroad in the land.³⁵

The CRPD has an inclusive reference to disability within its purpose statement rather than a definition based on delianations which is another departure from these earlier treaties.³⁶ The CRPD makes multiple references to participation.³⁷ Article (m) of the

³⁵ J tenBroek, 'The Right to Live in the World: The Disabled in the Law of Torts' [1966] 54(2) California Law Review 841-919

³⁶ CRPD Article 1

³⁷ CRPD Preamble (e), (k), (m), (y) and Articles 1, 3, 19, 24, 26, 29, 30 and 34

Preamble highlights the importance of participation within society to contribute ‘to the overall well-being and diversity of their communities,[...] will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society.’³⁸ Preamble (o) requires that people with disabilities have the opportunity ‘to be actively involved in decision-making processes about policies and programmes, including those directly concerning them’.³⁹ Quinn and Degener argue that this involvement completes the transition of people with disabilities as subjects to rather than objects of human rights law as they are able to direct all aspects of their lives.⁴⁰ Mégret⁴¹ and Dhanda⁴² argue that the CRPD offers an insight into the traditionally maintained dichotomy about positive and negative rights. The CRPD bridges the space between negative rights and positive rights, by regulating the provision of infrastructure and support needed so that people with disabilities can enjoy their rights in practice such as Alternative Augmentative Communication (AAC) and exercising their legal capacity.⁴³ However, there are elements of Dhanda’s discussions concerning resources which present practical issues for people with disabilities in terms of access to education in practice, and thematic issues about the relationship to economics.⁴⁴

CRPD Article 12(1) reaffirms ‘that people with disabilities have the right to recognition everywhere as persons before the law.’ Articles 12 (2) and 12 (3) raise important issues regarding capacity and vulnerability providing an opening for students to consider the interactions between the mechanisms of justice and disability in both concrete and

³⁸ CRPD Preamble (m)

³⁹ CRPD Preamble (o)

⁴⁰ G Quinn & T Degener ‘Human Rights and Disability: The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability’ (www.ohchr.org, 2002) <<http://www.ohchr.org/Documents/Publications/HRDisabilityen.pdf>> accessed 10 October 2016

⁴¹ F Mégret, ‘The Disabilities Convention: Human Rights of Persons with Disabilities or Disability Rights?’ [2008] 30 Human Rights Quarterly

⁴² A Dhanda, ‘Constructing a new human rights lexicon: Convention on the Right of Persons with Disabilities’ [2008] Year 5 (Number 8) SUR – International Journal on Human Rights 43-58

⁴³ Mégret n.41. 10-13 and Dhanda n. 42. 49-50

⁴⁴ Dhanda n. 42. 47 and 49

abstract ways. Article 8 focuses on raising awareness about disability rights. Incorporating disability discourse into liberal legal education and developing Proactive Critical Citizenship offers an avenue to achieve this on two levels. Firstly, of rights protected and secondly, the need for future protection and thirdly to develop a proactive rather than reactive response to discrimination. Without linking the concrete and esoteric elements of rights, citizenship and law through education, the CRPD will remain a static document. Awareness-raising is an important aspect of participation and education is a key aspect of this as it presents an opportunity and a structure through which to achieve it. It is recognised as such in every supranational human rights document relating to disability.⁴⁵ Articles 35-38 require state parties to engage in reporting and monitoring exercises. Without a knowledge of the text of the Convention itself, few people with or without disabilities will have sufficient understanding of the role and importance of the Optional Protocol to the Convention. At the time of writing, there were only 92 Signatories to the Optional Protocol despite 160 Signatories to the Convention.⁴⁶ The Optional Protocol contains the procedural steps to be taken when a breach occurs, it is arguable that this is one of the most important elements in transforming the Convention from the abstract to the concrete as it allows people whose rights have been violated to engage directly with the state party responsible and seek redress.⁴⁷ By producing literature, Law Schools might contribute to a greater understanding of the CRPD and its capabilities. Consequently, it is arguable that the incorporation of discussions of the law relating to disability,

⁴⁵ Declaration on the Rights of Mentally Retarded Persons 1971 Article 2, Declaration on the Rights of Disabled Persons 1975 Article 6, Implementation documents relating to the World Programme of Action (see bibliography), Standard Rules on the Equalization of Opportunities for Persons with Disabilities 1994 Rule 6, Reaching the most vulnerable; proposed supplement to the Standard Rules on the Equalization of Opportunities for Persons with Disabilities Annex in UNGA Monitoring the implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, fortieth session (12-22 February 2002) E/CN.5/2002/4 and CRPD Article 24.

⁴⁶ Status as at : 15-01-2018 05:00:38 EDT UN Treaty Collection, '15. Convention on the Rights of Persons with Disabilities - Signatories' (*un.org*, 15 January 2018) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en> accessed 15 January 2018 and UN Treaty Collection, '15. a Optional Protocol to the Convention on the Rights of Persons with Disabilities – Signatories' (*un.org*, 15 January 2018) https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&clang=_en> accessed 15 January 2018.

⁴⁷ CRPD Optional Protocol Article 1

particularly the CRPD within the undergraduate legal curriculum has the potential to fulfil a human rights objective and to begin the process of communicating and widening the concept of Proactive Critical Citizenship to civil society. The World Programme of Action comments on the reciprocal relationship between the rights and obligations of people with disabilities and states that people with disabilities have a duty to take part in the building of society and that societies must raise the level of expectations as far as people with disabilities are concerned and in doing so mobilise resources for social change.⁴⁸ This section highlights the need for society to recognise a social model approach to disability. Society is predisposed to recognise the disability rather than the ability of people with disabilities.⁴⁹ Accessible liberal legal education which includes disability, could enable people with disabilities to raise their expectations of themselves and initiate societal change through discussions with people without disabilities, about disability.

Education as a form of participation and a means to advance, promote and protect the human rights of people with disabilities

Several documents recognise that education is a means of achieving social participation and other human rights. The Declaration on the Rights of Mentally Retarded Persons states:

“The mentally retarded person has a right to proper [...] education, training, rehabilitation and guidance as will enable him to develop his ability and maximum potential.”⁵⁰

⁴⁸ United Nations, *United Nations Decade of Disabled Persons 1983-1992 World Programme of Action concerning Disabled Persons* (1982). Para. 26

⁴⁹ *Ibid.* Para. 27

⁵⁰ Declaration n.15. s. 2

Similarly, Article 6 of the Declaration on the Rights of Disabled Persons protects this right as a means of hastening ‘the processes of their social integration or reintegration.’⁵¹ The first provision appears to embody a liberal standpoint on education that it is for the sake of individual enrichment, to develop full potential. The later provision takes a utilitarian approach, viewing education as a way of making people with disabilities useful and economically productive thus integrating them into society.

The CRPD states that learning should be directed to:

‘The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;’⁵²

Paragraph 1(b) reiterates the importance of utilising education as a means of enabling people with disabilities to develop to their fullest potential⁵³ and links effective education directly with the ability to participate effectively in a free society.⁵⁴ Critical liberal legal education, engendering Proactive Critical Citizenship within students, may provide an avenue for effective participation within society by people with disabilities as they would be exposed to ideas that would be useful in both achieving effective participation and integration but calling for change when necessary.

There are several supplementary documents regarding disability but concerning provision of education to marginalised groups. These include the UNESCO Convention Against Discrimination in Education, the UNESCO Salamanca Statement

⁵¹ Declaration n. 21. S.6

⁵² CRPD Article 24 Para. 1(a)

⁵³ *Ibid.* Para. 1(b)

⁵⁴ *Ibid.* Para. 1 (c)

and the Framework for Action on Special Needs Education and UNESCO World Declaration on Education for All and Framework for Action to meet Basic Learning Needs.

General Comment No. 13 1999 on the International Covenant on Economic, Social and Cultural Rights (ICESCR) deals with the right to education. Education should be viewed as a stand-alone right and a means of realising all other human rights.⁵⁵ It is an empowering right enabling people to lift themselves out of poverty and participate fully in their communities.⁵⁶ Article 13(1) of the ICESCR links education and dignity.⁵⁷ Consequently, lack of an understanding of the legislative framework surrounding people with disabilities disrespects their human dignity because their sense of informed decision making could be diminished. General Comment No. 13 argues that education must be available to the most vulnerable groups and must be both physically and economically accessible.⁵⁸ This requires that education is adaptable to the needs of changing societies, communities and diverse students.⁵⁹ Arguing that disability perspectives on law cannot be integrated into the undergraduate liberal legal curriculum could breach General Comment No. 13 and possibly Rule 6 of the Standard Rules and Articles 1(a) and (b) of UNESCO's Convention Against Discrimination in Education (CADE)⁶⁰ and the Salamanca Statement.⁶¹ ⁶² General Comment No. 13 enshrines the right to academic freedom and institutional autonomy in higher education to develop knowledge and ideas through research, teaching, study, discussion, documentation, production and creation or writing.⁶³ This requires people

⁵⁵ ICESCR General Comment No. 13: The Right to Education (Art. 13) (1999) Contained in Document E/C.12/1999/10 Para. 1

⁵⁶ *Ibid.*

⁵⁷ ICESCR Article 13 Paragraph 1

⁵⁸ ICESCR General Comment No. 13 n. 55. Para. 6(a)-(d)

⁵⁹ *Ibid.* Para. 6(d)

⁶⁰ This Convention contains no reference to people with disabilities or people of 'other status' but prohibits discrimination against all people. This is positive for people with disabilities because they do not need to assume or maintain a status of other to be afforded protection.

⁶¹ Salamanca Statement 1994 11

⁶² *Ibid.* Para. 17

⁶³ *Ibid.* Para. 39

to respect the academic freedom of others and to ensure fair discussion of contrary views and not to discriminate against those who hold them.⁶⁴ Consequently, not opening certain areas of the law to critique, or preventing students from expressing contrary views could be in breach of General Comment 13.

Rule 6 of the Standard Rules⁶⁵ reiterates the importance of accessibility to information and communication⁶⁶ and higher education to equalise opportunities for people with disabilities.⁶⁷ Additionally, it advocates mainstream educational settings with ‘appropriate’ support services and ‘adequate’ accessibility and support designed to meet the needs of people with different disabilities.⁶⁸ ‘Appropriate’ measures suggest that they must be suitable or proper in the circumstances which focuses on effectiveness rather than economic boundaries. Though, ‘adequate’ provision places a boundary on access to key elements such as resources, lowering the threshold to ‘acceptable’ rather than necessary. At a minimum, people with disabilities should be afforded the same portion of educational resources as students without disabilities. This guards against economic justifications for preventing students with disabilities from accessing education. ‘At a minimum’ is indicative of a substantive⁶⁹ than formal⁷⁰ approach to equality. This acknowledges that in some cases students with disabilities may require what would be unequal treatment to give equal access to opportunities compared to those without disabilities, closing comparative arguments. Rule 14 lays responsibility with society for policy making and planning and that anyone in charge of services, activities, information in society should be encouraged to accept

⁶⁴ *Ibid.*

⁶⁵ Standard Rules on the Equalization of Opportunities for People with disabilities 1994 Rule 6

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ Equal Rights Trust, 'The Ideas of Equality and Non-Discrimination: Formal and Substantive Equality' (November 2007)

<<http://www.equalrightstrust.org/ertdocumentbank/The%20Ideas%20of%20Equality%20and%20Non-discrimination,%20Formal%20and%20Substantive%20Equality.pdf>> accessed 31 October 2016. This is based on equality of outcomes where different people are treated differently to ensure parity of results.

⁷⁰ Aristotle, 3 *Ethica Nicomachea*, 112-117, 1131a-1131b, Ackrill, J. L. and Urmson J. O. (eds.), W. Ross translation, Oxford University Press, 1980

responsibility for making such programmes available to people with disabilities. Rule 14 (5) argues that states should facilitate the development by local communities of programmes and measures for people with disabilities and one way of doing this could be to produce documentation and give training to local staff. Universities can represent microcosmic communities where exemplar behaviours can be displayed and encouraged. If we apply this rule to university education, replacing staff with the more equitable concept of fellow students, means that this rule provides support for the development of an inclusive liberal legal curriculum relating to disability rights.

The UNESCO Convention against Discrimination in Education (CADE) 1960⁷¹ prevents any form of discrimination in education, promoting equality of opportunity and treatment for all in, whilst respecting diversity of education systems at signatory levels. It is viewed as essential to overcome discrimination in terms of education to enable previously disadvantaged or vulnerable groups to benefit from education.⁷² CADE reveals several articles which provides support for integrating disability rights into the undergraduate liberal legal curriculum. These articles could be used to help law students understand the link between access to education and advancing disability rights. Article 5: Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.⁷³ References to collaboration and similarity⁷⁴ remove the element of the 'other' around disability, society, law and education. Promoting a sense of Proactive Critical Citizenship to drive change create a sense of ownership of the framework. Though, not every critique or criticism should or must be acted upon, any criticism can and should be aired for wider consideration. UNESCO's Salamanca Statement and

⁷¹UNESCO, 'Convention against Discrimination in Education (CADE) 1960
<http://portal.unesco.org/en/ev.php-URL_ID=12949&URL_DO=DO_TOPIC&URL_SECTION=201.html> accessed 24 October 2016

⁷² *Ibid.* Article 5

⁷³ *Ibid.* Article 5

⁷⁴ *Ibid.* UNESCO Recommendation concerning the Most Effective Means of Rendering Museums Accessible to Everyone 14 December 1960

Framework for action on Special Needs Education World Conference on Special Needs Education: Access and Quality⁷⁵ links education and the advancement of disability rights.⁷⁶

The Salamanca statement makes a direct link between the value and role of research in relation to access to education and subsequently human rights and the mandate of UNESCO.⁷⁷ This is a key element to include in any discussion with students as it shows a direct link between the need and value of innovation and the rights framework and education and this may increase their confidence and sense of ownership and encourages them to research further and bring about change in the future. The Statement argues that universities have a ‘major advisory role’⁷⁸ in developing special needs education with regard to teacher training in both practice and design and networking to share resources and perspectives.⁷⁹ It highlights the need for role models for students for them to be able to design their own career patterns and aspirations around.⁸⁰ Universities should take an active interest in tackling issues of inequality, not just how education is provided, but the values and processes of education to ensure that the identities of people with disabilities are enriched by education. Universities should answer and explore certain questions that arise to become models of how society might function in the future and the consideration of disability both in the context of law and education are important questions to answer given their central place in the functioning and development of the human rights framework.^{81,82}

⁷⁵ Salamanca n. 61.

⁷⁶ *Ibid* Viii-xi

⁷⁷ *Ibid.* xii

⁷⁸ Salamanca n.61 Part C Para 47

⁷⁹ *Ibid.* 28-29

⁸⁰ *Ibid.*

⁸¹ *Ibid.* 7 and 11

⁸² *Ibid.* 11

Thematic issues

Status

The CRPD fails to link childhood and adulthood experiences of education.⁸³ This indicates a vestige of the medical model approach, it suggests that any difficulties or barriers that are present for children with disabilities may have been overcome by the time they reach adulthood. The development of people with disabilities into adults with an adult claim that society should recognise as the holders of rights and full and active citizens should be recognised, rather than as smiling and dependent children educated to the point of society's expectations and limitations. From a critical legal studies perspective, creating a false natural ending point to the education of people with disabilities is a means of controlling their consciousness of the oppressive nature of the legal and education systems by limiting their knowledge.⁸⁴ This is important knowledge to inculcate into the legal curriculum, as a means of deconstructing and engendering the concept of Proactive Critical Citizenship.

The 1998 Resolution by the Commission on Human Rights⁸⁵ included people with disabilities directly under all the existing conventions relating to women's rights, rehabilitation and the Vienna Declaration. However, the language of the document is non-committal with the use of words such as 'recognising', 'reemphasising', 'recalling', 'encourages', 'invites', 'request', 'recommends', 'reaffirms' and 'calls upon'.⁸⁶ It discusses the continuing validity and value of "the World Programme of Action [...] which provides a firm and innovative framework for disability-related issues."⁸⁷ This

⁸³ See A Lawson 'The United Nations Convention on the Rights of Persons with Disabilities: New Era or False Dawn?' [2007] 34 Syracuse J Int'l L & Com 563

⁸⁴ Theory Chapter, Critical Legal Theory, Critical Legal Studies

⁸⁵ Human rights of people with disabilities C.H.R. res. 1998/31, ESCOR Supp. (No. 3) at 117, U.N. Doc. E/CN.4/1998/31 (1998).

⁸⁶ *Ibid.*

⁸⁷ *Ibid* and Review and appraisal of the World Programme of Action concerning Disabled Persons Report of the Secretary-General, Fifty-second session, Item 104 of the provisional agenda, 16 September 1997

reaffirmation does not recognise the weaknesses such as 'prevention' and 'rehabilitation' in relation to disability. That this document was written in 1998 and the latest draft of the WPA at the time in 1997 suggests that this was still a main concern for drafters and that attitudes had not changed to consider the implication of this phraseology. In monitoring documents⁸⁸ there are few references to education or higher education or interaction with government beyond the involvement of Disabled Peoples Organisations DPOs and Non-Governmental Organisations NGOs. This shows a lack of change across a long period. The review of the World Programme in 1997 argued that it was a continually valid framework for advocacy and policy design and there were no lacunae for research and analysis to develop alternative strategies.⁸⁹

Monitoring reports on legislation focusing on education prioritise the needs and rights of children with disabilities.⁹⁰ The CRPD uses a twin-track approach to equality and non-discrimination⁹¹ shown by references to Convention on the Rights of the Child (CRC) and The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). This recognises the importance of difference of experience and discrimination. This should be raised when discussing disability in legal education to counteract the idea of people with disabilities as homogenised. The CRPD approach to disability and status mirrors reality and is aligned with interactionist models⁹² of disability rather than the strict dichotomies of the social and medical model.

⁸⁸ United Nations, 'Towards a society for all: Long-term Strategy to Implement the World Programme of Action concerning Disabled Persons to the Year 2000 and Beyond' (UN Enable, 2003/4) <<http://www.un.org/esa/socdev/enable/dislts00.htm>> accessed 16 January 2017

⁸⁹ Review n. 87. Policy Framework

⁹⁰ UNGA Monitoring the implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, thirty eighth session (8-17 February 2000) E/CN.5/2000/3 Para. 119 and UNGA Monitoring the implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Fortieth session (9-18 February 2005) E/CN.5/2005/5 Para. 23

⁹¹ CRPD Article 16 (5), Article 28 (2)(b), Preamble Q and Articles 6 and 7.

⁹² T Shakespeare, *Disability Rights Rights and Wrongs* (1st, Routledge, Oxon 2006), 55-62

Economics

Stein and Lord highlight that failure of the CRPD committee and the drafters to provide a funding stream to begin the implementation of the Convention in developing countries was a missed opportunity.⁹³ Though financial barriers and concerns will be different for all countries, the potential to limit or slow implementation remains. There is no need to differentiate based on the development of countries. This distinction places developing countries and the rights of people with disabilities living in them at the mercy of the benevolence of wealthier countries. A central aspect of this thesis is that perspectives on disabilities rights, including their funding needs to shift so that there is a sense of ownership, empowerment, and pride throughout society, rather than states viewing them as an expensive obligation for the few rather than the many.

Reasonable Adjustment and Undue Burden

Maintaining 'reasonable adjustment' and 'undue burden' in Article 2 CRPD is problematic. The dictionary definition of reasonable supports this: 'not making unfair demands,' 'moderate in price' and 'average.' 'Undue' mirrors these, it is defined as being 'unwarranted or inappropriate because excessive or disproportionate,'⁹⁴ which indicates a lowering of expectation. Quinn defends 'reasonable accommodation' as redistribution though he cautions that this does not lessen the need for a debate about access to economic and social cultural rights.⁹⁵ Lawson⁹⁶ argues that reasonable adjustment and undue burden are positive, highlighting that the notion of undue burden means that a wealthy business will be expected to do more than a small business when allocating financial resources to the provision of access. However, she does not engage with the problematic element of people with disabilities having their

⁹³ MA Stein and JE Lord, 'Monitoring the Convention on the Rights of Persons with Disabilities: Innovations, Lost Opportunities, and Future Potential' [2010] 32 Human Rights Quarterly 713

⁹⁴ *Oxford Dictionary of English* (3rd edn, Oxford University Press 2010)

⁹⁵ O Mjöll Arnardóttir and G Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives* (Martinus Nijhoff 2009) xxi.

⁹⁶ A Lawson 'The United Nations Convention on the Rights of Persons with Disabilities: New Era or False Dawn?' [2007] 34 Syracuse J Int'l L & Com 598-599

expectations curbed by those without disabilities. Nor does she consider that the conceptualisation of people with disabilities as burdensome directly contravenes the respect for dignity and autonomy.

Trömel highlights that the concept of reasonable accommodation created some controversy during the drafting process as a member representing the European Disability Forum⁹⁷ during the drafting of the CRPD. Some delegates from NGOs of people with disabilities argue that the qualification imposing undue burden was unacceptable.⁹⁸ However, this was countered by the recognition that reasonable accommodation relates to the individual rather than general accessibility measures.⁹⁹ It was decided that denial of reasonable accommodation amounted to discrimination which Trömel highlights is important for the production of meaningful anti-discrimination legislation as a result of the implementation of the CRPD.¹⁰⁰ Trömel argues that this produces a stronger document than the European Employment Equality Directive, where there is no definition of disability or impairment, creating incoherence and weakened protection.¹⁰¹ Trömel highlights that maintaining reasonable adjustment in the CRPD was justified because it applied to individual rather than group access.¹⁰² This has implications about individual worth and the need to justify access when more assistance than is considered reasonable is needed. It also demonstrates the fractured nature of the framework; hoping that localised weaknesses will be ameliorated by the overall meaning of the document or latter provisions. This maintains a system whereby people can fall through the cracks meaning that it may not be as effective as it might be.

⁹⁷ S Trömel, A Personal Perspective on the Drafting History of the United Nations Convention on the Rights of Persons with Disabilities. in G Quinn and L Waddington (eds), *European Yearbook of Disability Law* (Intersentia 2009) 117

⁹⁸ *Ibid.* 122-123

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.* 123

¹⁰¹ *Ibid.*

¹⁰² *Ibid.* 122-123

French and Kayess, praise reasonable adjustments for triggering the provision of access to people with disabilities, they fail to suggest a means of overcoming the weaknesses in expression whilst maintaining the strength of action.¹⁰³ Additionally, the concepts of reasonable adjustments and undue burden are offensive. In the context of a convention which recognises the dignity and autonomy of people with disabilities, these phrases appear to suggest that people with disabilities might not recognise these qualities in other people and so there needs to be a limiting parameter on what they will ask for to not take a disproportionate amount of resources away from others. These arguments demonstrate a lack of understanding of intersectionality because people with disabilities may experience multiple discrimination¹⁰⁴ so would wish to maintain for other grounds, if needed. This is evident in Broderick's work.¹⁰⁵ She highlights that dignity is on the periphery of the duty to accommodate¹⁰⁶ this is problematic because any approach to access should be centred around dignity as a foundation. This will be necessary in certain contexts but this balancing act is not as dichotomous as some authors would present it.¹⁰⁷ In support of the argument for the need to consider dignity in relation to reasonable adjustment Broderick makes reference to General Comment 2 from the Committee on the Rights of Persons with Disabilities and the role of dignity and autonomy in assuring social justice.¹⁰⁸ However, references to the notion of undue burden undermines this recognition and valuing of rights: The duty of reasonable accommodation, contrarily, exists only if implementation constitutes no undue burden on the entity.¹⁰⁹ This poses the question of where 'a person with a rare impairment might ask for accommodation that falls

¹⁰³ P French and R Kayess, 'Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities' [2007] Human Rights Law Review 27

¹⁰⁴ D Schiek, 'Intersectionality and the Notion of Disability in EU Discrimination Law' [2016] 53(1) Common Market Law Review 62.

¹⁰⁵ A Broderick, *The Long and Winding Road to Equality and Inclusion for Persons with Disabilities* (1st edn, Intersentia 2015) 171-174

¹⁰⁶ *Ibid.* 151-162

¹⁰⁷ *Ibid.* 151-152

¹⁰⁸ *Ibid.* 163

¹⁰⁹ UN Committee on the Rights of Persons with Disabilities, General Comment No. 2 on Article 9 (Accessibility), adopted at the eleventh session of the Committee (30 March-11 April 2014) on 11 April 2014, UN Doc, CRPD/C/GC/2, para 25

outside the scope of any accessibility standard¹¹⁰ to protect their dignity, choices and privacy,¹¹¹ if an accommodation was defined as unduly burdensome.

Broderick acknowledges,¹¹² some authors argue that reasonable adjustment and undue burden are problematic because they involve people with disabilities being measured by able-bodied standards¹¹³ and conforming to social norms.¹¹⁴ In her review of reasonableness, Broderick highlights third party benefits of reasonable adjustments.¹¹⁵ Whilst this is true, it does not move away from reasonable adjustments measuring disability from able-bodied standards and norms. This suggests that people with disabilities have to justify their rights based on their usefulness for people without disabilities. This restores unequal power relations and undermines the paradigm shift of the Convention.

Regarding discussions of undue burden, Broderick considers factors such as cost and the size of the organization.¹¹⁶ Broderick considers several international initiatives and precedents for funding reasonable adjustments and overcoming undue burden.¹¹⁷ Whilst this is important, relying on states to look to numerous outside sources for ideas, rather than providing consolidated guidance, is confusing and removes control from those seeking adjustments. From an education point of view, prospective students could evaluate various funding approaches and suggest possible alternatives.¹¹⁸ Reasonable adjustments and undue burden in the CRPD highlight its internal paradox within the human rights framework because failure to provide

¹¹⁰ *Ibid* para 26

¹¹¹ Broderick n.105. 163

¹¹² *Ibid.* 156-157

¹¹³ See B Byrne, 'Minding the Gap? Children with Disabilities and The United Nations Convention on The Rights of Persons with Disabilities in M Freeman (ed.), *Law and Childhood Studies*. (Oxford University Press, Oxford 2012)

¹¹⁴ S Day and G Brodsky, 'The Duty to Accommodate: Who will benefit?'(1996) 75 *Canadian Bar Review*

¹¹⁵ Broderick n.105. 171-173

¹¹⁶ *Ibid.* 164

¹¹⁷ *Ibid.* 163-170

¹¹⁸ *Ibid.*

reasonable adjustments amounts to discrimination by failure to provide access.¹¹⁹ Yet what can be provided is limited by undue burden economic parameters, which are defined by those without disabilities.

The potential to deny reasonable accommodation on cost grounds may nullify the recognition of difference for people with disabilities and the practical achievement of rights. This could lead to dissonance between legislation and practical rights. General Comment No. 4 states that lack of resources cannot justify failure to provide reasonable adjustments,¹²⁰ emphasising the need to maximise existing resources and create new revenue streams. However, it gives no indication as to where new resource avenues may be found which is of little use to states attempting to rectify funding shortfalls.¹²¹ A thematic study on the Rights of People with Disabilities to Education expresses similar concerns without solution,¹²² highlighting the need for the Committee on the Rights of persons with disabilities to develop guidelines as to reasonable accommodation standards under the Convention.¹²³ This indicates a key problem with the concept of reasonable adjustment, failure to translate the concepts for the esoteric to the concrete. That the General Assembly and the committee are recognizing such fundamental issues but failing to provide guidance or consider mandating for change is indicative of the limits of legalism and human rights, in the sense that traditional legislative processes may not always be the most effective approach. This highlights the need to link ideas and practice, which could be achieved through liberal legal education. Consequently, the appositeness of maintaining the

¹¹⁹ CRPD Article 2

¹²⁰ UN Committee on the Rights of Persons with Disabilities, General Comment No. 4 on Article 24 : Right to inclusive education (2 September 2016), UN Doc, CRPD/C/GC/4, 9-10

¹²¹ *Ibid.*

¹²² UNGA 'A/HRC/25/29 Thematic study on the right of persons with disabilities to education, Report of the Office of the United Nations High Commissioner for Human Rights', Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, Human Rights Council (18 December 2013) Twenty-fifth session Agenda items 2 and 3

¹²³ *Ibid.* 15-16

notions of reasonable adjustment and undue burden in the human rights framework regarding disability becomes a valid question for academic debate with students to develop Proactive Critical Citizenship. Broderick highlights that inclusion of reasonable adjustment in the CRPD may prove to be a ‘Trojan horse’ preventing the implementation of social, economic, cultural, civil and political rights.¹²⁴ She highlights issues such as ‘minimal thresholds’ to meet basic rights and progressive realisation considering availability of resources and priorities of states.¹²⁵ She acknowledges that the effect of cumulative inequalities for certain groups needs acknowledgement to achieve full and effective realisation of the CRPD.¹²⁶ However, she weakens this argument by stating ‘one must be realistic about the types of measures that states can take in the implementation of the socio-economic rights in the CRPD, particularly developing states.’¹²⁷ This is disempowering, it dictates how people assess the disadvantage that they experience. It places limits on the validity and impact of that experience on the individual without truly understanding the implications of this. To encapsulate the argument, what may be unrealistic at the start of a process is unlikely to be unrealistic at the end of the process and it is arguable that this way of thinking stunts progress and new ways of thinking over time, as demonstrated by changing approaches to disability. Lord and Brown argue that including reasonable accommodation in the CRPD is positive as it makes it applicable in other countries.¹²⁸ They argue that this challenges ‘outmoded characterizations about disability issues as belonging to medical or charitable spheres of action and thus grounded in paternalistic, welfare-oriented claims of beneficence’.¹²⁹ However, this thesis argues that the concept itself and how it is expressed in the legislation should be rethought and rephrased to exemplify a rights-based perspective presenting people with disabilities as equal

¹²⁴ Broderick n.105. 178

¹²⁵ *Ibid.*179

¹²⁶ *Ibid.*

¹²⁷ *Ibid.* 180

¹²⁸ J E Lord, and R Brown, *The Role of Reasonable Accommodation in Securing Substantive Equality for Persons with Disabilities: The UN Convention on the Rights of Persons with Disabilities* (2010). Available at SSRN: <https://ssrn.com/abstract=1618903> or <http://dx.doi.org/10.2139/ssrn.1618903>

¹²⁹ *Ibid.* 24

citizens with a right to claim necessary resources to enable them to access their rights. It is argued here that the current arrangement simply spreads and perpetuates existing weaknesses into new contexts rather than simplifying and making the framework more effective. To overcome some of the issues created by the reasonable thresholds, Broderick suggests turning to the South African approach to reasonableness. She argues that it recognises the prerogative of governments to make choices that are appropriate to the national context, acknowledging the need for certain criteria to ensure compliance with human rights norms.¹³⁰ The first strand of the test is applying dignity to the facts presented and prioritising the needs of those most disadvantaged. Outcomes must provide short term relief for the most urgent needs.¹³¹ The equality standard is a measure of what is unreasonable if it unfairly excludes a particular marginalised group.¹³² Broderick argues that exploring this intersection between equality and socio-economic rights under the CRPD may provide a key to addressing remaining inequalities.¹³³ She highlights that the effectiveness of measures adopted are key in the South African approach. The important element is that any measures facilitate access to human rights. Lastly, she highlights that the South African reasonableness test includes a requirement for participatory processes and consultation with marginalised groups in policy making and implementations.¹³⁴ Whilst these elements are positive it is difficult to see how they will make a concrete difference in practice. The requirement that the most dire needs are addressed first could create a hierarchy of both needs and rights, which demonstrates the history of disability and human rights protection in law has not served people with disabilities well.¹³⁵ Secondly, the CRPD already includes the need to consult with marginalised groups in terms of policy development and engagement.¹³⁶ Lastly, this approach still requires states to

¹³⁰ Broderick n. 105. 204

¹³¹ *Ibid.*

¹³² *Ibid.* 205

¹³³ *Ibid.*

¹³⁴ *Ibid.*

¹³⁵ Declaration n. 21 and Declaration n.15

¹³⁶ CRPD Article 4 (3)

prioritise spending and resource allocation and if states remain unwilling to do that then change is unlikely to appear in real terms. Broderick herself has acknowledged criticism from within South African literature of the reasonableness review approach as being vague and uncertain.¹³⁷ Broderick suggests her own framework for monitoring the implementation of progressive realisation of rights.¹³⁸ These include, ensuring the effectiveness of reasonable adjustments in overcoming barriers as outlined in the *Grootboom* Case and in the Optional Protocol to the ICESCR.¹³⁹ Concerning cost implications, she argues that South African jurisprudence does not provide much guidance¹⁴⁰ and states that any analysis must entail the balancing of burdens and interests.¹⁴¹ She argues that it is necessary to engage in priority settings when allocating resources. However, she argues that transparency is the most important thing and that governments should be able to show the budgeting decisions that led to final outcomes.¹⁴² She highlights that Treaty bodies cannot direct states as to resource allocation but can monitor these allocations and look at resources as a whole, rather than compartmentalised elements. Broderick argues that the dignity must be part of resource allocation to go beyond catering for those basic needs and imposing a higher threshold on states to eliminate disadvantaged and inferior status.¹⁴³ Though, this does not appear radically different from the CRPD approach to progressive realisation.

Progressive realisation is another internal paradox of the framework which could be explored through liberal legal education. General Comment No. 4 states that reasonable accommodation is immediately applicable¹⁴⁴ and not subject to progressive realisation.¹⁴⁵ States must create monitoring systems to ensure reasonable adjustments

¹³⁷ Broderick n. 105. 205

¹³⁸ *Ibid.* 207-208

¹³⁹ *Ibid.* 213-215

¹⁴⁰ *Ibid.* 215

¹⁴¹ *Ibid.*

¹⁴² *Ibid.* 216-218.

¹⁴³ *Ibid.* 225

¹⁴⁴ *Ibid.* Para. 30

¹⁴⁵ *Ibid.* Para. 30

occur¹⁴⁶ although they may see this as another hurdle to meet their obligations requiring funding. However, arguably monitoring highlights issues but does not resolve them, so may not assist practical implementation of rights. Lawson argues that progressive realisation can be positive in giving states time to plan for change and consider its impact.¹⁴⁷

Economic considerations are not limited to the CRPD. The Voluntary Fund on Disability links the funding of Disability rights to notions such as goodness and decency that states will see the value of promoting disability rights without concrete measures from treaty bodies.¹⁴⁸ This is evident in the use of language such as ‘is encouraged’, ‘notes with satisfaction’, ‘expressing its appreciation’ or conversely, ‘noting with concern’, ‘stresses’, ‘reaffirms’ and ‘invites.’¹⁴⁹ This is problematic for two reasons as a voluntary fund, it makes disability rights fulfilment and promotion seem like the Pharaoh’s dream,¹⁵⁰ an optional extra in excess budget times rather than a long term commitment. Secondly, by instituting an act of donation rather than structured public funding similar to taxation or state contributions to a supranational organisation¹⁵¹ for example, sends the message that the rights of people with disabilities are not worth the same in monetary terms as those without as they are not expected to be funded internally or by states themselves if they argue they are unable to do so.

¹⁴⁶ *Ibid.*

¹⁴⁷ A Lawson, Different types of reasonable? Critical reflections on reasonable accommodation and progressive realisation in the UN CRPD, 3rd April 2014, Maastricht University, Equal Rights and Accessible Environments: The UN CRPD and EU Disability Law and Policy, <<http://mediasite.unimaas.nl/Mediasite/Play/113519bbc41f4955a102531b7776e78a1d>> accessed 4 July 2014 and A Lawson, The UN Convention On The Rights Of Persons With Disabilities And European Disability Law: A Catalyst For Cohesion?. in O Mjöll Arnardóttir and G Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives* (Martinus Nijhoff 2009) 93

¹⁴⁸ UNGA, ‘Implementation of the World Programme of Action concerning Disabled Persons and the United Nations Decade of Disabled Persons’ ([A/RES/45/91](#)), UNGA, ‘World Programme of Action concerning Disabled Persons’ ([A/RES/37/52](#)) and UNGA, ‘Implementation of the World Programme of Action concerning Disabled Persons’ ([A/RES/37/53](#))

¹⁴⁹ UNGA ‘Implementation of the World Programme of Action concerning Disabled Persons and the United Nations Decade of Disabled Persons’ ([A/RES/45/91](#))

¹⁵⁰ Holy Bible New International Version, ‘Pharaoh’s Dream’ (*Biblegateway.com*, 2011) <<https://www.biblegateway.com/passage/?search=Genesis+41>> accessed 5 August 2016

¹⁵¹ M A Browne & L Blanchfield, ‘United Nations Regular Budget Contributions: Members Compared, 1990-2010’ (*www.fas.org*, 15 January 2013) <<https://www.fas.org/sgp/crs/row/RL30605.pdf>> accessed 5 August 2016

Relying on international cooperation for funding could be dangerous as many states would be likely to have calls on their funding. They would be unwilling to outsource them to other states to fund something which initiatives suggest is non-essential.

Despite the human rights and empowerment focus to the Salamanca Statement, guidance to implementation has strong focus on cost effectiveness [...] of approaches to promoting equality of access for those with special educational needs as part of a nationwide strategy aimed at achieving education for all.¹⁵² It recognises the importance of the ‘principle’¹⁵³ of equality in education for people with disabilities at all levels. Recognition of a principle is both subjective and difficult to quantify, making it difficult to hold states to time scales. Additionally, language used indicates a lack of commitment to driving change through legislation or change in practice. A focus on economics becomes a barrier to accessing adaptations and assistance needed to take part in education to the fullest.¹⁵⁴ It prevents people with disabilities from fully developing their intellectual, social and legal identities if education is viewed solely as a means of economic integration over self-enrichment. However, the Statement argues for transition into higher education wherever possible.¹⁵⁵ However, the focus moves back to the importance of vocational training to ensure that they become functioning, contributing members of their communities after leaving school.¹⁵⁶ The stronger the legislative framework around disability and access to education and society, the more that this functioning is likely to be improved, but for this to happen people with disabilities and society need to engage with the framework to improve any weaknesses which prevent participation. This is unlikely to occur until people have the skills and space to discuss the ideas needed. This research argues that the liberal, legal

¹⁵² Salamanca n.61. 17

¹⁵³ *Ibid.*17

¹⁵⁴ *Ibid.* 33-34

¹⁵⁵ *Ibid.* 34

¹⁵⁶ *Ibid.*

undergraduate curriculum is the best space to begin this process. CADE¹⁵⁷ recommendations concerning access to museums should be applied to access to formal education: that access should not be curtailed by economic considerations. As this can ‘[...] give fresh impulse to popular education and to the spread of culture, to collaborate in the work of advancing the mutual understanding of peoples by instituting collaboration among them [...]’¹⁵⁸

The limits of the Legislative process

Limits of Legislation to produce change

Across the documents in the framework, language is none committal, phrases such as ‘recognizing,’ ‘emphasising,’ ‘being concerned’ as well as ‘undertake’ or ‘promote.’¹⁵⁹ Quinn¹⁶⁰ and Broderick¹⁶¹ argue that states need to engage in human rights dialogue about disability to highlight barriers and attitudes. Liberal legal education could mirror this approach so that students learn new ways to engage with legislation which might transfer to future careers. Quinn argues that it is not possible to remove all ambiguity from the Convention because it does not deal with concrete norms such as other conventions such as prohibition of torture or slavery.¹⁶² He highlights that certain states may object to certain elements of language but may not highlight this as they do

¹⁵⁷ CADE n. 71.

¹⁵⁸ *Ibid.* UNESCO Recommendation concerning the Most Effective Means of Rendering Museums Accessible to Everyone 14 December 1960

¹⁵⁹ CRPD Preamble and UNGA ‘A/RES/52/82 Implementation of the World Programme of Action concerning Disabled Persons: Towards a Society for All in the Twenty-first Century’ (30th September 1998) 52nd Session,

UNGA ‘A/RES/54/121 Implementation of the World Programme of Action concerning Disabled Persons:

towards a society for all in the twenty-first century’ 83rd plenary meeting (17 December 1999) [on the report of the Third Committee (A/54/595)], UNGA ‘A/RES/56/115 Implementation of the World Programme of Action concerning Disabled Persons: towards a society for all in the twenty-first century’ 88th plenary meeting (19 December 2001) [on the report of the Third Committee (A/56/572)], UNGA ‘A/RES/58/132 Implementation of the World Programme of Action concerning Disabled Persons: towards a society for all in the twenty first century’ 58th Session, 77th plenary meeting (22 December 2003) [on the report of the Third Committee (A/58/497 (Part II))]

¹⁶⁰ G Quinn, ‘Resisting the Temptation of Elegance: Can the Convention on the Rights of Persons with Disabilities Socialise States to Right Behaviour?’ in O Mjöll Arnardóttir, G Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities European and Scandinavian Perspectives* (1st, Koninklijke Brill NV, Leiden, the Netherlands. 2009)

¹⁶¹ Broderick n. 105. 154-155

¹⁶² Quinn n. 160. 221

not wish to be seen as blocking process, thinking that the interpretation that they wish to use is right and will be used in the end.¹⁶³ Quinn argues that monitoring bodies need a true understanding of the paradigm shift from welfare to rights.¹⁶⁴ This supports the argument that law students and future lawyers need to be able to have the skills necessary to find this essence and understand the paradigm shift. Quinn cites that there will always be a margin of appreciation for states but that to overcome this it is important that ‘a new practice of disability politics emerges that engages all stakeholders in a common search for solutions that work and are acceptable.’¹⁶⁵ Consequently, it is possible for liberal legal education, which includes disability perspective to form part of this new politic.

Quinn expresses reservation against falling into a trap of believing that because the CRPD exist,¹⁶⁶ there will an automatic change in attitudes and procedures. Whilst the convention acknowledges that people with disabilities are subjects of human rights who can make claims against those rights, rather than objects of care and charity.¹⁶⁷ Quinn argues that this change in attitude should not be underestimated.¹⁶⁸ He posits that the transformation of ideas into practice will not be straightforward, especially in instances where attempts to make changes involve abandoning established ways of thinking, because these systems have been set up with express aim of maintaining the status quo.¹⁶⁹ He argues that drafting of the CRPD has the potential for some states to argue that existing exclusionary practices are compatible with or even mandated by it. For example, if they were to misapply a formal interpretation of equality, as many of the articles state that rights are to be enjoyed ‘on an equal basis with others,’¹⁷⁰ along

¹⁶³ *Ibid.* 222-2

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid.* 221

¹⁶⁶ *Ibid.*

¹⁶⁷ *Ibid.* 215

¹⁶⁸ *Ibid.* 216

¹⁶⁹ *Ibid.* 216

¹⁷⁰ *Ibid.*

with the right to claim reservations and individualised declarations.¹⁷¹ States can claim that parts of the Convention may be incompatible with national law, or in the case of individualised interpretations, states consent to be bound but will outline how they will fulfil any obligations in practice.¹⁷² Quinn argues that reservations illustrate how, although language may appear clear and a document may have a clear aim, it is difficult to bring about change in practice.¹⁷³ He argues that a principal test for the Convention is whether or not it can highlight the needs of people with disabilities and in doing so inspire members of society to push for the changes needed in response.¹⁷⁴ Consequently, Quinn argues that it will be necessary for states and legislators to internalise the principals and values of the convention.¹⁷⁵ Quinn comments that this will best occur through a process of persuasion and socialisation, where law and policy makers, who are anxious to present their countries in a positive light on the international stage could become socialised to align policy with the cosmopolitan norms and thus bring about meaningful change.¹⁷⁶ One way to achieve this, Quinn argues could be achieved first with diplomats, who will be able to work within their own jurisdictions to bring about change. However, he argues that since diplomats rarely return home, a new group of reformers will be needed.¹⁷⁷ Quinn's arguments provide support for the inclusion of disability perspectives into liberal legal education to advance disability rights, because it would serve as a site of socialisation and persuasion to assist the formal elements of the convention in altering social attitudes.¹⁷⁸¹⁷⁹ Presenting the CRPD as an intellectual exercise to stimulate the curiosity of all students and to give them a sense of ownership over its genesis and workings, may encourage them to take up any challenges that they uncover or encounter and use them

¹⁷¹ *Ibid.* 222

¹⁷² *Ibid.*

¹⁷³ *Ibid.* 217

¹⁷⁴ *Ibid.* 218

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.* 220

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.* 230

¹⁷⁹ *Ibid.* 233-234

to drive arguments forward both in academia and in the wider society. These elements are relevant to all human rights documents not just disability and the CRPD.

Quinn examines why traditional disability politics have failed.¹⁸⁰ He identifies two main reasons for the failure of traditional disability politics. Firstly, that people with disabilities and their families have been unable to participate due to focusing on day to day survival and a sense of fear that criticism of service provision and other actions may lead to them being cut. Secondly, governments have not traditionally believed that people with disabilities can and should become involved, meaning that they have no comparative currency within the political market place.¹⁸¹

Limits of Involvement of People with Disabilities – Issues of NGOs and DPOs

In response to limited effectiveness of the initial approaches to government to make changes in response to grave concerns the World Programme of Action encouraged governments ‘to involve people with disabilities in the formulation of strategies and plans aimed at eradicating poverty, promoting education and enhancing employment.’¹⁸² There is a dissonance in the language because ‘eradicate’ or ‘to destroy completely’¹⁸³ is more concrete than ‘promoting,’ ‘supporting or actively encouraging’¹⁸⁴ or ‘enhancing,’ ‘improving the quality of’.¹⁸⁵ This suggests that the World Programme of Action seeks to shift responsibility for what they have been unable to achieve onto people with disabilities in terms of achieving the aim of the Action Plan, meaning that the Action Plan cannot be held responsible for any failure if this course of action is used.

¹⁸⁰ *Ibid.* 221-222

¹⁸¹ *Ibid.* 221-224, 227-229

¹⁸² UNGA ‘A/RES/54/121 Implementation of the World Programme of Action concerning Disabled Persons: towards a society for all in the twenty-first century’ 83rd plenary meeting (17 December 1999) [on the report of the Third Committee (A/54/595)] Para. 8.

¹⁸³ OED 2010

¹⁸⁴ *Ibid.*

¹⁸⁵ *Ibid.*

Article 33 (3) of the CRPD requires that people with disabilities, civil society and NGOs are actively involved in the monitoring process of the implementation of the CRPD. However, in Draft Resolution II E/2003/26 Comprehensive and Integral International Convention to Protect and Promote the Rights and Dignity of Persons with Disabilities ¹⁸⁶ there is reference for the need to ensure that UN documentation and facilities are made accessible through reasonable adjustment. Lack of foresight about accessing key parts of the process undermines the participation for people with disabilities in relation to new legislation, prioritising the role NGOs or representative organisations. This emphasises that engagement needs to focus on access to build confidence which is not helped by the thresholds of reasonable adjustment and undue burden. Article 29 CRPD requires that people with disabilities, with the help of representative organisations where necessary, are able to become involved in public and political affairs. ¹⁸⁷ Article 29 supports the idea of incorporating a critical perspective on law relating to disability at the multinational level in the undergraduate legal education to enable students to comment on the effectiveness and implementation of the CRPD and make arguments for change. However, the heavy involvement of NGOs and DPOs in the drafting of the CRPD was lauded as an example of increased participation and involvement by and of people with disabilities within the drafting process and consequently the legislative process relating to disability. However, it is contended here that the role and importance of this involvement should not be overstated. Lawson is somewhat guilty of this, as she argues that the heavy involvement of NGOs in the CRPD drafting process means that ‘it would not be inaccurate to regard the CRPD as having been largely written by disabled people.’¹⁸⁸ It is more accurate and important to regard the CRPD as having been largely

¹⁸⁶ Draft Resolution II E/2003/26 Comprehensive and Integral International Convention to Protect and Promote the Rights and Dignity of Persons with Disabilities

¹⁸⁷ CRPD Article 29

¹⁸⁸ A Lawson, *The UN Convention On The Rights Of Persons With Disabilities And European Disability Law: A Catalyst For Cohesion?*. in O Mjöll Arnardóttir and G Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives* (Martinus Nijhoff 2009) 617-618

written by *some* disabled people and the likelihood is that these disabled people will have a different more empowered notion of disability than those who were not actively involved, and whose interests arguably will continue to be underrepresented at the legislative level until the discourse is opened up. Liberal legal education could be the first steps to achieving this.

Trömel argues that whilst the involvement of NGOs can be controversial, the decision within the drafting process to establish a unified and coordinated platform for both NGOs and DPOs, known as the International Disability Caucus (IDC) gave these organisations a chance to unite in one voice and to influence the drafting process.¹⁸⁹ The decision to give this group a working group to produce a final draft of the text was testimony to their important role in the process.¹⁹⁰ These representatives were appointed based on the distribution of seats among five UN geographical regions with candidates submitted by the NGOs and decided by the UN Secretariat.¹⁹¹ Trömel argues that the creation of the IDC meant that people worked together to ensure that different impairment groups and different regional groups were represented.¹⁹² ‘Nothing About Us Without Us’ soon became the slogan of the IDC and signalled that times had changed from people with disabilities not being involved in the passing and creation of legislation effecting them.¹⁹³ Whilst Trömel recognises the importance of the involvement of people with disabilities, he fails to consider that the coming together of voices under the IDC is still only the coming together of particular people with disabilities who feel comfortable in becoming involved in activism which will always weaken the true representativeness of these actions. Stein and Lord highlighted

¹⁸⁹ S Trömel, A Personal Perspective on the Drafting History of the United Nations Convention on the Rights of Persons with Disabilities. in G Quinn and L Waddington (eds), *European Yearbook of Disability Law* (Intersentia 2009) 117

¹⁹⁰ *Ibid.*

¹⁹¹ *Ibid.*

¹⁹² *Ibid.*

¹⁹³ *Ibid.* 118

the failure of the CRPD drafting committee to harness individual submissions to increase representation.¹⁹⁴

Roberts identifies the role of DPOs to enable people with disabilities to express their own agendas and needs rather than having to rely on others to get their message across.¹⁹⁵ Derksen¹⁹⁶ stated that for people with disabilities to assert their rights they must form a strong and coherent movement to enable them to “[...] reason together, [...] deliberate on our problems and needs [...] consider our abilities [...] when we have agreed on the problems and solutions let us articulate our opinions and ideas in a strong and united voice.”¹⁹⁷ Enns links disability and critical education, stating that DPOs originate with those with further education which enables them to analyse and identify the barriers they face and to organise themselves to respond to them.¹⁹⁸ This highlights the need to ensure that people with disabilities have access to education to enable them form such groups. This access and response to grass root needs can be achieved in a number of ways. Enns highlights the necessity of accessible infrastructure to enabling people with disabilities to participate in DPOs to ensure representations.¹⁹⁹ Lang highlights that many NGOs have been unsuccessful in fulfilling their mandates and that there is a gulf between rhetoric and practice.²⁰⁰

¹⁹⁴ MA Stein and JE Lord, 'Monitoring the Convention on the Rights of Persons with Disabilities: Innovations, Lost Opportunities, and Future Potential' [2010] 32(0) Human Rights Quarterly 697. See also UNGA 'Report of the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities'(2005) (A/57/357) Section IV

¹⁹⁵ E Roberts, 'When others speak for you, you lose' (January 1983) <http://www.oac.cdlib.org/view?docId=hb3j49n6hw&brand=oac4&doc.view=entire_text> accessed 26 August 2016

¹⁹⁶ J Derksen, "Editorial Comment", *Challenger* 1 (July 1975): 1-2

¹⁹⁷ *Ibid.*

¹⁹⁸ H Enns, 'The Role of Organizations of Disabled People: A Disabled Peoples' International Discussion Paper' (<http://www.independentliving.org>, 25 July 2016) <<http://www.independentliving.org/docs5/RoleofOrgDisPeople.html>> accessed 25 July 2016

¹⁹⁹ *Ibid.*

²⁰⁰ R Lang, 'The Role of NGOs in the Process of Empowerment and Social Transformation of People with Disabilities.' in M Thomas, MJ Thomas (Eds) *Selected Readings in Community Based Rehabilitation Series 1*, Bangalore, 2000. 15

Bowe argues that, to be suitably representative of people with disabilities, any process must involve reciprocity, by which those who claim to represent the wishes of the group at a wider level must return to the group and discuss any deliberations for feedback.²⁰¹ The third element of DPOs as found by Enns is representations to government service providers and UN bodies. Enns argues that this enables government planners to discover what the majority of people with disabilities want, rather than leaving them to channel funds based on their assumptions.²⁰² For Enns, there are several indirect benefits of DPOs, including the ability to monitor the effective implementation and delivery of initiatives and services, personal development opportunities for people with disabilities to gain new skills and confidence, and potentially salaried employment by becoming involved in these organisations and a mutual sense of support and solidarity with other people with disabilities experiencing similar difficulties through coming together and sharing knowledge and gaining a sense of oneself.²⁰³

Human Rights and the provision of Education in practice

To include the rights of people with disabilities into liberal legal education, it is necessary to consider any barriers to the learning environment for people with disabilities and how to include examples of interactions between law and disability into the curriculum. There is little secondary literature critiquing the content of the CRPD over and above the compromises made during the drafting process.²⁰⁴ Several authors highlight the importance of ensuring that people with disabilities and civil society are involved in the enforcement of the implementation of the convention in their societies, this provides a burgeoning literature to direct students towards.²⁰⁵

²⁰¹ F Bowe, "Who Represents Disabled People?" In 1980 World Congress Plenary Session Papers, 13-15. Edited by Rehabilitation International, New York: Rehabilitation International, 1980. 126

²⁰² H Enns n. 198.

²⁰³ *Ibid.*

²⁰⁴ Lawson n.188. 589-590

²⁰⁵ See A Arstein-Kerslake & G Quinn, Restoring the 'human' in 'human rights': personhood and doctrinal innovation in the UN disability convention. in C Douzinas and C Gearty (eds), *The Cambridge Companion to Human Rights Law* (CUP 2012) 39-41 and 52-53. AS Kanter, "The Promise and Challenge

General Comment No. 4²⁰⁶ highlights a number of important issues to consider when achieving access in practice. These include the adoption of universal design about both infrastructure and resources.²⁰⁷ The Comment highlights the lack of textbook and learning materials in accessible formats and requires that states invest in the development of resources within these formats and produce guidelines as to their production.²⁰⁸ State parties must train teachers and educators to respond to the needs of learners with disabilities and provide inclusive learning environments where all feel safe and able to participate.²⁰⁹ Despite this extensive guidance, the General Comment maintains a child focus and fails to consider where the financial resources to meet these needs will come from, save from transferring them from segregated systems, which may lead to disparity in provision before transfer is complete.²¹⁰

Article 24 of the CRPD makes three references to the importance of providing qualified staff members able to use both sign language and Braille and the importance of promoting the identity and culture of the deaf community and facilitating the learning of Braille.²¹¹ Though these are important, there are other equally important skills which would be required by educators to be able to best provide education to a number of people with different types of impairment and those without impairment which are not enumerated so explicitly by the convention. Examples of this may include the needs of people with certain forms of psychosocial impairment such as autistic spectrum disorder who may experience barriers due to being unable to engage

of the United Nations Convention on the Rights of Persons with Disabilities' [2007] 34 Syracuse J Int'l L & Com 314 and A Lawson 'The United Nations Convention on the Rights of Persons with Disabilities: New Era or False Dawn?' [2007] 34 Syracuse J Int'l L & Com 616

²⁰⁶ UN Committee on the Rights of Persons with Disabilities, General Comment No. 4 on Article 24 : Right to inclusive education (2 September 2016), UN Doc, CRPD/C/GC/4

²⁰⁷ *Ibid.* 8 Para. 21

²⁰⁸ *Ibid.* Para. 22

²⁰⁹ *Ibid.* Para. 70

²¹⁰ *Ibid.* Paras 27,39,61(h),68

²¹¹ CRPD Article 24 (3)a, b and (4).

in the social niceties²¹² between student and tutor, which, may lead to difficulties in understanding the information presented or to access support when necessary. UK Charity Scope have released a campaign called End the Awkward.²¹³ People with numerous experiences of disability and a diverse range of impairments give details of difficulties in communicating with people. Often, these are not related to the ability to produce communication, but rather barriers to communication as a result of a misunderstanding of disability in context. Consequently, when incorporating disability rights into the liberal legal curriculum it is necessary that both teachers and students are aware of these issues to ensure that the problem is not perpetuated, and liberal legal education can truly be said to be representative of society. Article 21 CRPD protects and promotes the rights of people with disabilities to Freedom of Expression. If students with disabilities cannot access this information on a free and equal basis with others, they may not be able to seek and receive the information to enable them to exercise this right of freedom of expression and opinion. This would be contrary to the purpose of liberal legal education as this highlights the importance of moving away from previous discussions of access to university which have particularly focused on physical barriers to student participation such as lack of access²¹⁴ for wheelchair users and others based on impairment rather than the sociocultural aspects of university and individual disciplines. The inclusion of Augmentative Alternative Communication,(AAC)²¹⁵ sign language and Braille suggests that these three modes of communication have a greater sense of social legitimacy as recognised languages and systems that can be taught to members of staff, leaving those unable to use formal systems of alternative communication open to difficulties due to non-verbal issues of communication as highlighted by the Scope campaign.

²¹² B Vicker, (2009). The high functioning person with an autism spectrum disorder: A “tourist” in his native country. Bloomington, IN: Indiana Resource Center for Autism.

²¹³ Scope 2016, 'End the awkward: The basics' (www.scope.org.uk, 2016) <<http://www.scope.org.uk/end-the-awkward/the-basics>> accessed 4 October 2016

²¹⁴ T Tinklin, S Riddell, A Wilson, 'Disabled Students in Higher Education' [2004] CES Briefing No. 32 1

²¹⁵ CRPD Article 21

The drafting process of the CRPD, presents a reason for this hierarchy as organisations representing people with sensory impairments and disabilities such as World Blind Union and World Federation of the Deaf were heavily involved in the drafting process and so these needs were communicated to the drafters.²¹⁶ This highlights the importance of participation by people with disabilities and ensures that spaces for participation are provided. This is a key element of Proactive Critical Citizenship, as without opportunity for engagement, people cannot make active statements to highlight and change issues, as Critical Legal Studies argues lack of participation and understanding limits space for critique and change. Having the skills and ability to examine elements of legislation and identify weaknesses is important in the identification and prevention of inequality moving forward. For law students this presents an opportunity to learn about the need to consider a wide range of requirements when legislating on areas such as disability and it is a chief example of not regarding any legislation as perfect and free from critique or improvement after it is drafted. This will hopefully engender the idea that like many other social and legal issues, disability is ever changing and evolving, and society's response and behaviour needs to do the same.²¹⁷

Regarding curriculum content, it is necessary to consider cases which might be used, the issues which these may highlight and where they would be most suited in the curriculum. In *Zsolt Bujdosó*,²¹⁸ the Committee on the Rights of Persons with Disabilities

²¹⁶ UN, 'Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities New York, 16-27 June 2003 NGO contributions to the elements of a convention' (www.un.org, June 2003) <http://www.un.org/esa/socdev/enable/rights/a_ac265_2003_crp13_add1.htm> accessed 4 October 2016

²¹⁷ D Kennedy, *Legal Education and the Reproduction of Hierarchy: A Polemic against the System*. in D Kennedy (ed), *Legal Education and the Reproduction of Hierarchy: A Polemic against the System* (New York University Press 2004) 17-29

²¹⁸ Communication No. 4/2011 *Zsolt Bujdosó and five others v. Hungary* [2011] 10 C 1 (CRPD Committee) <<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Jurisprudence.aspx>> accessed 6th May 2014

acknowledged that people with disabilities should not be excluded from the right to vote based on capacity. This is an active demonstration of Quinn's conception of personhood, that people with disabilities should not be viewed as needing a greater level of support in their decision making than a person without a disability.²¹⁹ This illustrates practical recognition of the dignity of people with disabilities and transforms it from an abstract idea into a practical concept. However, the recommendations of the Committee are bound by the notion of 'reasonable accommodation.'²²⁰ They do not specify what is reasonable. As such, people with disabilities may be unable to access the support needed to exercise their right to vote if access measures are deemed too costly or alter the process for the State. The lengthy preclusion of people with disabilities from exercising voting rights in Hungary may make a significant number of new procedures and access measures necessary. Depending on the expense incurred, the State party may be able to argue that this constituted an undue financial burden, which is permissible under Article 2 CRPD. The case of *Nyusti and Takács*²²¹ highlights the tension created by 'reasonable adjustment' in the context of rights and duties, because despite having paid the same fee as all the other members of OTP Bank Zrt. Credit Institution, the citizens were unable to use the ATM services due to their visual impairment, as Braille keyboards or audio assistance were not provided.²²² Consequently, they were being charged the same fee for lower levels of service. The Committee argued that under Article 4 of the CRPD,²²³ which requires states to take all appropriate measures to eliminate discrimination on the basis of disability by any person or private entity, applied to the Bank as a private facility open to the public, as such accessibility must be taken into account.²²⁴ These cases could be easily integrated

²¹⁹ G Quinn, Rethinking personhood: New Directions in Legal Capacity Law & Policy. Or How to put the 'Shift' back into 'Paradigm Shift' (1st, University of British Columbia, Vancouver, Canada 2011) 17.

²²⁰ See above n. 218

²²¹ Communication No. 1/2010 Szilvia Nyusti, Péter Takács and Tamás Fazekas v Hungary [2010] 9 C 1 (CRPD Committee)

<<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Jurisprudence.aspx>>last accessed 6th May 2014

²²² *Ibid.*

²²³ CRPD

²²⁴ See n. 221. 13 (9.2).

into the curriculum in considerations in public law and the way that democracy works in relation to the case concerning voting. The ATM case could be discussed in terms of human rights law generally, as it highlights interesting issues in relation to privacy, or in terms of land law for access to a facility generally and the discussion of access once a person got to a building. Though these cases are not English, they form the jurisprudence of the CRPD Committee and so are applicable across ratified countries.²²⁵ Bantekas and Oette argue that it sent a clear message to states about the need to ensure that both public and private institutions are accessible to people with disabilities.²²⁶ They also highlight that the differing outcomes of Hungarian Supreme Court, who found that the Bank had not discriminated against the claimants and the CRPD Committee demonstrates how the interpretation and understanding of the Convention by the judiciary and civil society differ from its intent and demonstrates the requirement for states to take concrete measures towards implementation.²²⁷ Both this dissonance and illustration of the commitment to address seemingly minor discrimination would enable students to consider the totality of disability rights and the importance of monitoring²²⁸ and awareness raising²²⁹ to the functioning of the Convention.

Conclusion

This chapter has argued that the development of Proactive Critical Citizenship is supported by the content of the supranational human rights framework in relation to

²²⁵ UN Human Rights Office of the High Commissioner, 'Jurisprudence' (ohchr.org, 2018) <juris.ohchr.org> accessed 1 March 2018 and UN Committee on the Rights of Persons with Disabilities, 'Jurisprudence' (ohchr.org, 17 August – 4 September 2015) <<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Jurisprudence.aspx>> accessed 13 March 2018

²²⁶ I Bantekas and L Oette, *International Human Rights Law and Practice* (2nd edn, Cambridge University Press 2016) 227-228

²²⁷ *Ibid.* 228

²²⁸ CRPD Article 33

²²⁹ *Ibid.* Article 8

disability. This is seen through the linking of a respect for the rights and dignity of people with disabilities with the concept of participation. Education is a key element of that participation. The framework mandates that civil society including people with disabilities and not just states should be actively involved in the critique and monitoring of the implementation of these rights in practice. The chapter has shown that continued reliance on the role of NGOs and DPOs presents limits as to the effectiveness of this participation. It is argued that the inclusion of discussion of the law relating to the rights of people with disabilities in the undergraduate legal curriculum creates a space for students to engage with issues and as such take an active part in the process of monitoring and critique. Moreover, close critical thematic analysis of the framework has highlighted several other issues that have the potential to limit the scope for change and the implementation of this legislation in practice. These internal weaknesses and inconsistencies in the framework demonstrate why legal education could create Proactive Critical Citizenship to highlight and remove these barriers to rights in the future. Barriers include continued economic focus and the lack of a fully formed framework for implementation and to change attitudes in practice. Lastly, this chapter analysed guidance for inclusive education in practice and how cases which may be included and studied to demonstrate violations of the human rights of people with disabilities in practice. Students should gain practical insight into the issues facing people with disabilities and how violations occur and are remedied to produce change. The following chapter will explore the impact of European legislation on access to legal education for students with disabilities both in terms of curriculum content and in practice and in the creation of a sense of Proactive Critical Citizenship and the advancement of disability rights.

Chapter 4: EU Framework around disability from 1973-March 2017

The decision in the United Kingdom on the 23rd of June 2016 to withdraw from the European Union ('Brexit') means that the status of EU law concerning disability in the English legal framework is uncertain. Consequently, the aim of this chapter is to discuss the existing framework around disability to evaluate the rhetoric around Brexit and disability both before and after the referendum.

Dignity

Given the instability in the current EU framework and its relationship to the domestic framework, dignity will not be a separate theme in this chapter. Rather, it will be woven into the discussion of about potential changes and responses to change to demonstrate the value of including discussions around disability and Brexit in the liberal legal education context. The European Union Charter of Fundamental Rights and Freedoms Article 1 states that human dignity is inviolable and must be protected and respected including for people with disabilities.¹ The CRPD Committee Report of 2017 on the UK expressed concerns about the lack of consideration of the needs of people with disabilities during the Brexit process and the impact afterwards.²

Status

The foundation treaties of the EU: Amsterdam³, Nice⁴ and Lisbon⁵ all specifically recognise disability and Article 100a of the Treaty establishing the European Community confers citizenship rights by requiring all institutions of the community to

¹ European Charter of Fundamental Rights and Freedoms 2012 Article 1.

² United Nations, 'Committee on the Rights of Persons with disabilities' [2017]

CRPD/C/GBR/CO/1 Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland Principal areas of concern and recommendations A. General principles and obligations (arts. 1-4) (e)

³ Treaty of Amsterdam Article 6a, Treaty of Lisbon Part 2 Article 19 (1).

⁴ Treaty of Nice Article 13 (1)

⁵ Treaty on European Union - Maastricht Treaty, Single European Act, Merger Treaty - Brussels Treaty, Treaties of Rome : EEC and EURATOM treaties, Treaty establishing the European Coal and Steel Community.

account for 'the needs of persons with a disability.'⁶ Priestley⁷ argues that the first formal recognition of the needs of people with disabilities by the EU in the 1974 Resolution by Council of the European Communities, was written in medicalised language of normality and functionality, but that it represented a recognition of the need for community action and recognition.⁸ Additionally, Priestley highlights that early action plans regarding employment and disability were negotiating in consultation with people with disabilities.⁹ Though, he argued that the application was hindered in practice due to the narrowness of the Helios Framework.¹⁰ The Helios framework focused on awareness raising and creating citizenship.¹¹ Education forms a key part,¹² but as with the supranational framework, there was great focus on elementary education¹³ and employment¹⁴ rather than further and higher education.¹⁵ There are many references made to parents of children with disabilities and organisations which assist people with disabilities.¹⁶ Helios highlighted the need to harness the European Structural Funds as part of the new EU strategy for people with disabilities.¹⁷ Helios focus on NGOs¹⁸ is problematic due to vested interest and limits to the representation of the experience of people with disabilities by NGOs because they may not be a viable option for all. Developments around education for people with disabilities began with the Council Resolution of 31 May 1990 'Concerning Integration of Children and

⁶ Treaty of Amsterdam Article 22.

⁷ M Priestley, We're all Europeans now! The social model of disability and European social policy and the Majority World. in C Barnes and G Mercer (eds), *The Social Model of Disability: Europe and the Majority* (Leeds University Press 2005) 17-33.

⁸ *Ibid.* 19.

⁹ *Ibid.* 20

¹⁰ *Ibid.*

¹¹ European Commission 'Helios II European Guide of Good Practice: Towards Equal Opportunities for Disabled People' 1996 43.

¹² *Ibid.* 33 and 43

¹³ European Commission, 'The European Day for People with Disabilities' (*europa.eu*, 3 December 1996)

<http://europa.eu/rapid/press-release_IP-96-1114_en.htm> accessed 28 March 2017.

¹⁴ Resolution of the Council and the Ministers of Education Meeting within the Council concerning integration of children and young people with disabilities into ordinary systems of education [1990] OJ 1 162/002 Article 8.

¹⁵ See n. 7. See for example 35-38

¹⁶ *Ibid.* 35, 39.

¹⁷ European Commission, 'The European Day for People with Disabilities' (*europa.eu*, 3 December 1996)

<http://europa.eu/rapid/press-release_IP-96-1114_en.htm> accessed 28 March 2017.

¹⁸ *Ibid.*

Young People with Disabilities into Ordinary Systems of Education'.¹⁹ However, as with many of the documents discussed in this thesis, the focus was on rights of children rather than adults and the reference to adults focused on education to transition them into work and the economic implications of that, rather than the importance of rights and their knowledge of them to wider social participation and integration and advancement of rights²⁰. Priestley highlights that a focus on employment was to be expected given the Union's focus on economic matters at this stage in its development.²¹ Priestley highlighted that the EU mirrored the UN statement of intent with the Standard rules with the Disabled People's Parliament was held to mark the first European Day of Disabled People, at which around 500 participants agreed recommendations to the Commission (Report of the First European Disabled People's Parliament, 3 December 1993).²² This recommendation restated that disabled people have equal share of human rights, but that they face discrimination at three levels in exercising these rights: direct and indirect discrimination and 'unequal burdens' in relation to social barriers and structures.²³ The 'unequal burdens' appears to be a reclamation of the notion of burden by people with disability, to place it onto society, rather than the individual as implied by the notion of 'undue burden'. If society were more inclusive, there would be no burden in having to accommodate people with disabilities, perspective would shift and fewer retrospective actions would be needed. Priestley highlights that this signalled the beginning of a radical agenda of change, in which was consolidated by the Treaty on the Functioning of the European Union.²⁴ Lawyers and the law built on the stimulus of social rights inclusion within the EU framework, by the DPM, by bringing the necessary skills to codify and formalise these developments.²⁵ This highlights the

¹⁹ Resolution of the Council and the Ministers for Education meeting within the Council of 31 May 1990 concerning integration of children and young people with disabilities into ordinary systems of education [1990] OJ 1 162/01

²⁰ *Ibid.*

²¹ Priestley n. 7. 20.

²² *Ibid.* 21.

²³ Report of the First European Disabled People's Parliament, 3 December 1993 44 para G.

²⁴ Priestley n. 7. 22.

²⁵ *Ibid.*

importance of including disability rights discourse into liberal legal education so that developments continue. Moreover, it demonstrates the need for people with disabilities to have power with the law as it affects and aides them so that they can have full involvement in the formalisation of their rights. However, Priestley argues that to achieve recognition of their rights, legal initiatives alone will not suffice without greater focus on social participation.²⁶ Quinn provides an overview of the development of a disability perspective to the EU treaties arguing that by the mid-1990s ‘drastic changes’ were required and that Article 12 of the then TEC provided the groundwork for the Treaty of Amsterdam to build upon.²⁷ Quinn highlights particularly the role of NGOs such as Helios and the European Disability Forum and Disabled Persons International in raising the awareness of the needs of people with disabilities and the development of a human rights perspective to treaties which culminated in the European Day of the Disabled and an influential report entitled ‘Disabled Peoples status in the European Treaties – The Invisible Citizens’ which critiqued the absence of the needs of people with disabilities in community legislation whilst highlighting the way that policies compounded issues further by contrasting the situation within the EU to that of the United States, Canada and Australia.²⁸ The consequence of this was that in a Report of 1996 gave detailed arguments about changes that could be made at the up and coming Amsterdam Summit which enabled NGOs to evaluate and reject certain options such as soft law provisions such as amending Article 2 of the TEU and to begin building the argument for amending and expanding the existing anti-discrimination provisions to cover disability along with an economic impact assessment of doing so.²⁹ This pointed out the gains to be made and the draft discrimination clause was centred around the definition of discrimination as the denial

²⁶ *Ibid.* 25-26.

²⁷ G Quinn, *The Human Rights of People with Disabilities under EU Law*. in Alston and others (eds), *The EU and Human Rights* (OUP 1999) 306.

²⁸ *Ibid.*

²⁹ *Ibid.* 306-7.

of reasonable accommodation for people with disabilities.³⁰ Quinn argued that one of the major arguments advanced at the time was that the insertion of such a clause did not add to the competency of the EU but rather gave control as to how existing competencies were used by people with disabilities.³¹ In order not to lose any ground already gained, the clause was added to acknowledge that some member states already had such measures in place which Quinn argues prevented them from fearing that any anti-discrimination developments may call these into question.³² Quinn then details the developments brought about by the relationship between the Helios II successor to the European Disability Forum, the Independent European Disability Forum in developing relationships between key social movements and NGOs to open up a dialogue between such organisations and the European Commission.³³ This led to a focus in paperwork directly engaging with the needs of people with disabilities.³⁴

Quinn praises the work by the Independent EDF with Disability NGOs from member states holding presidency during the negotiations, namely Italy, Ireland and the Netherlands to keep disability issues on the agenda.³⁵ Progress was made quickly with members of the Community supporting the inclusion of Disability rights within the treaties.³⁶ Arguments were advanced in favour of including disability in a specific chapter of the treaties but it was felt that limitations would need to be placed in such a document to prevent ‘disproportionate economic consequences.’³⁷ In the final Report by the Commission in relation to this matter, disability was not specifically mentioned as a ground for discrimination where race and gender were, much like the wording of the UN treaties disability was encompassed in the catch all phrase

³⁰ *Ibid.* 307.

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.* 308.

³⁷ *Ibid.*

prohibiting discrimination of any kind.³⁸ Quinn argues that this galvanised the NGO community to campaign to keep disability issues on the agenda.³⁹ Quinn argued that the next step in the development of EU policy concerning disability and people generally, was a movement from a passive to active social policy with a 1993 Green Paper making reference to the need to mainstream disability issues and to ensure that people with disabilities could access integrated education and employment to enable them to live their lives independently,⁴⁰ which Quinn argues signalled a move from passive recipients of protection to active agents of social participation.⁴¹ A 1994 White Paper went a step further to explicitly spell out the relationship between barriers within the EU and access to social participation,⁴² which mirrored the focus of the UN Standard Rules and their adoption by the Commission Council in 1996 which led to the mainstreaming of disability into areas such as the Information Society and the Structural Funds.⁴³ This led to development of relationships between member states and attempts to set up an observatory or network to provide information and to develop European-wide policies. However, Quinn highlighted the difficulties in achieving this and highlighted the importance of the civil dialogue supported by NGOs throughout Europe and their recognition as agents for change and legitimate stakeholders in the process.⁴⁴ The outcome of these negotiations was the formal recognition of the rights of people with disabilities in the Treaty on the European Union or the Amsterdam Treaty from a human rights perspective. However, he argued that at the time of this development, organisations could not be said to be sufficiently attuned to the disability perspective to ensure that these rights would materialise in practice and highlighted that the lack of specific provisions of voting rights to people with disabilities within member states and the high political costs that they engendered

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.* 309.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.* 309-10.

⁴⁴ *Ibid.* 310-11.

showed that there was still a great deal of ground to cover,⁴⁵ which is still the case today. For the agenda moving forward, Quinn's closing remarks although meant to represent a framework for the inclusion of disability rights perspectives into the European Union could represent a framework for the UK in a post-Brexit world and an architecture for the development of that world and the role of legal education and the law. For example, Quinn was keen to emphasise the notion of a Europe for all based on inclusion and celebration of human difference, the specific endorsement of a rights based perspective on disability and a synergy between markets and rights while placing emphasis on the rights and dignity of the individual.⁴⁶ He highlights the importance of active participation and citizenship enabled through a human rights agenda which should demonstrate rights as tools to build active participatory lives rather than simple protective devices.⁴⁷ He advocated the movement towards active measures to support participation and access to opportunities and the mainstreaming of disability into all policy debates and the giving of special attention to the substantive needs of people with disabilities to ensure that this shift in perspective can be achieved.⁴⁸

The 2000 Employment Directive provides protection for the right to employment for people with disabilities,⁴⁹ though it does not include a definition of disability. *Chacón Navas v Eurest Colectividades SA*⁵⁰ decided that the decision to refer to disability rather than sickness was a deliberate choice which could not be adjudicated on by the court.⁵¹ Disability must be a hindrance over a long period of time and, as such, could not be

⁴⁵ *Ibid.* 312-13.

⁴⁶ *Ibid.* 322.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.* 323.

⁴⁹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

⁵⁰ *Chacón Navas v Eurest Colectividades SA* (2006) C-13/05.

⁵¹ *Ibid.* Paras. 43-44.

used as soon as a worker developed a sickness.⁵² Sickness could not be regarded as an additional ground for discrimination under the Directive which provides an exhaustive list of grounds.⁵³ Hosking criticised the court's adherence to the medical rather than social interpretation of disability and failure to understand the complex interaction between impairment and the social and physical environment in creating disability.⁵⁴ He argues that this sets a precedent for states to apply the medical model domestically which may lessen the protective power of the directive, particularly in member states with no or weak domestic protections.⁵⁵

In the face of Brexit and future negotiations, it is important to bear such factors in mind because it could be easy to think that the UK's departure from the Union would automatically mean that no protection in such areas would remain. Indeed, this appears to have been the implication of certain media and rhetoric around disability and Brexit.⁵⁶ Examples of this include articles from Disability News Service, which are written in inflammatory and disempowering language, as they talk about certainty rather than uncertainty regarding disability rights post-Brexit, 'I have no doubt that [...]'⁵⁷ 'I am certain that [...]'⁵⁸ talk about people with disabilities being 'voiceless.'⁵⁹ The statement that 'extremely turbulent times lie ahead'⁶⁰ echoes Churchillian war

⁵² *Ibid.* Paras. 45-46

⁵³ Council Directive 2000/78/EC Article 1.

⁵⁴ D Hosking, 'A High Bar for EU Disability Rights' [2007] 36(2) *Industrial Law Journal* 237.

⁵⁵ *Ibid.* 228.

⁵⁶ See for example D Goodley, 'Brexit and the logics of ableism' (*speri.dept.shef.ac.uk*, 26 October 2016) <<http://speri.dept.shef.ac.uk/2016/10/26/brexit-and-the-logics-of-ableism/>> accessed 10 March 2017.

⁵⁷ J Pring, 'More disabled people add their voices to Brexit opposition' (*disabledgo.com*, 25 Mar 2016) <<http://www.disabledgo.com/blog/2016/03/more-disabled-people-add-their-voices-to-brexit-opposition/#.WMLVh9LyUk>> accessed 10 March 2017.

⁵⁸ R Al Jadir & J Pring, 'Brexit 'would have dire consequences for disabled people'' (*disabledgo.com*, 16 Mar 2016)

<<http://www.disabledgo.com/blog/2016/03/brexit-would-have-dire-consequences-for-disabled-people/#.WMLWCtKLSUk>> accessed 10 March 2017.

⁵⁹ *Ibid.*

⁶⁰ J Pring, 'Brexit vote: Fear and uncertainty over impact of EU exit' (*disabilitynewsservice.com*, 30 June 2016)

<<http://www.disabilitynewsservice.com/brexit-vote-fear-and-uncertainty-over-impact-of-eu-exit/>> accessed 10 March 2017.

speeches⁶¹, and give authority to the predictions where little certainty exists. Other examples include a Guardian article by Dame Jane Campbell⁶² including similarly negative language and ignores UK innovations to discrimination law prior to the EU membership. However, the legislative developments such as the DDA⁶³ and the Chronically Sick and Disabled Persons Act 1970 by Alfred Morris and Arthur Butler⁶⁴ after a private members bill to submit the Act to parliament indicate domestic innovations in this field prior to EU membership which suggests that Campbell's fears, though not unjustified and should not be ignored by complacency, are potentially overstated. It is questionable how far it is possible for a country working in a collaborative and mutually beneficial group, as the EU has been for several years, to be a leader or a follower, rather than a member, so this dismissal of UK involvement appears unjustified. However, several of these articles were written prior to the vote, meaning these perspectives could be attributed to the author's desire to persuade people to 'remain.' However, such language and imagery is demonstrative of the disempowerment of people with disabilities to those who are seen to 'speak' on behalf of others within the DPM, as they are speaking from their own experience of disability. Jane Campbell talks about the sense of isolation she felt when attending a segregated school and how when she left school she was permitted to go out and join society, and she fears that Brexit will lead to similar marginalisation again.⁶⁵ Whilst this was her experience, there will be a generation of young adults who have not experienced such exclusion as segregated education has not been the automatic provision for children and young people with disabilities for some time.⁶⁶

⁶¹ W Churchill, 'The End of the Beginning' (churchill-society-london.org.uk, 10 November , 1942) <<http://www.churchill-society-london.org.uk/EndoBegn.html>> accessed 13 March 2018

⁶² J Campbell, 'A 'go it alone' Britain will turn the clock back for disabled people' (*theguardian.com*, 7 June 2016)

<<https://www.theguardian.com/society/2016/jun/07/go-it-alone-britain-turn-clock-back-for-disabled-people>> accessed 10 March 2017.

⁶³ M Oliver, 'Rewriting history: the case of the Disability Discrimination Act 1995' [2016] 31(7) *Disability & Society* 966–968

⁶⁴ A Butler and A Morris, *No Feet to Drag Report on the Disabled* (Sidgwick and Jackson Ltd 1972) 13-25

⁶⁵ Campbell n. 60

⁶⁶ Select Committee on Education and Skills, 'Third Report, Annex: A statistical analysis of Special Educational Needs' (parliament.uk, July 2006)

A Stammering Law article ‘Brexit and Equality Act 2010’⁶⁷ uses parenthesis around the statement ‘and perhaps repeal’ which emphasises the possibility of repeal by drawing the reader’s eye from the main text, and mirrors the formation of an internalised thought and dialogue between the writer and the reader. Other phrases such as ‘though not relevant legally’ and repeated references to ‘uncertainty’ amplify this effect. Although the text acknowledges that Britain played a large role in the formation of non-discrimination law prior to EU involvement with it,⁶⁸ the writer fails to acknowledge that any period of uncertainty could end positively or negatively. The report ‘UK Disabled People and their Families: Stronger and Safer inside the EU’⁶⁹ demonstrates the need for the inculcation of a sense of Proactive Critical Citizenship, which presents the EU as a paternalistic pseudo-mechanised autonomous entity by talking about disability rights as something the EU achieved in isolation rather than acknowledging the EU as a collection of people with ideas, goals, analysing situations and communicating potential responses based on these interests of its members. There is no reason in a post-Brexit world that this could not continue at a national level.

The rhetoric around Brexit and disability rights both within the media and discussion papers from academics such as Fredman and Young⁷⁰ is inherently negative, emphasising what may be lost without contextualising that many of the protections strengthened by EU membership for people with disabilities were developed and refined by UK academics and organisations and the Disabled Peoples’ Movement prior

<<https://publications.parliament.uk/pa/cm200506/cmselect/cmeduski/478/47811.htm>> accessed 13 March 2018

⁶⁷ Stammering law, ‘Brexit and Equality Act 2010’ (*stammeringlaw.org.uk*, January 2017) <http://www.stammeringlaw.org.uk/proposed/brexit.htm> accessed 10 March 2017.

⁶⁸ *Ibid.*

⁶⁹ A Lawson, G Quinn and H C Jones ‘UK Disabled People and the Families – Stronger and Safer inside the EU’ (6 June 2016) <http://www.disabilityrightsuk.org/sites/default/files/word/brexitjune62016.docx> accessed 13 March 2017.

⁷⁰ S Fredman & A Young, ‘The Great Repeal Bill and Equality Rights’ (*ohrh.law.ox.ac.uk*, 2017) <<http://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/2017/02/Great-Repeal-Bill-and-Equality-Rights.pdf>> accessed 13 March 2017.

to EU involvement. Moreover, if the bureaucracy of the EU is stripped away, it is simply a collection of people with ideas, goals, analysing situations and communicating potential responses based on these interests of its members. There is no reason in a post-Brexit world that this could not continue at a national level. Fears about the status of the Court of Justice of the European Union (CJEU)⁷¹ ruling in *Coleman v Attridge Law 2008*⁷² are also unfounded because the protection from discrimination based on association with a person with a disability⁷³ was incorporated into the EQA 2010⁷⁴ meaning that any attempt to repeal or change this would require a Repeal bill with royal assent, which would present opportunity for people to challenge any changes before they occurred. However, this could not happen before understanding and awareness of legislation is increased for people with disabilities and the wider society as this thesis proposes.

This is not to say that we should be complacent about the possibility of rights being eroded post-Brexit. Rather, that this should not be assumed to be an automatic process and one only linked to Brexit. Fredman and Young highlight the possibility and potential danger of the government attempting to include a ‘Henry VIII clause’⁷⁵ into the Repeal Bill which would abolish the need for full referral of changes to parliament, which could permit unilateral decision making and removal of rights.⁷⁶ However, there are indications of the intention of the present government to transpose existing EU law⁷⁷ automatically ‘wherever practical.’⁷⁸ Therefore, the important thing is to equip

⁷¹ EUROPA, 'Court of Justice of the European Union (CJEU)' (*europa.eu*, 4 April 2017) <http://europa.eu/european-union/about-eu/institutions-bodies/court-justice_en> accessed 4 April 2017.

⁷² *Coleman v Attridge Law and Another* [2008] OJ 2 303/06.

⁷³ Disability Rights UK, 'Coleman v Attridge Law & Stephen Law - C-303/06', <<https://www.disabilityrightsuk.org/coleman-v-attridge-law-stephen-law-c-30306>> accessed 13 March 2017.

⁷⁴ Equality Act 2010 Sections 15 and 19.

⁷⁵ S Fredman & A Young, 'The Great Repeal Bill and Equality Rights' (*ohrh.law.ox.ac.uk*, 2017) <<http://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/2017/02/Great-Repeal-Bill-and-Equality-Rights.pdf>> accessed 13 March 2017.

⁷⁶ *Ibid.*

⁷⁷ J S Caird, 'Legislating for Brexit: The Great Repeal Bill' (21st November 2016) [House of Commons Briefing Paper N7793].

⁷⁸ *Ibid.* 4 quoted from House of Commons debate 10th October 2016 c.40.

people with disabilities and the wider public with the knowledge needed so that ‘wherever practical’⁷⁹ is not just what is practical for the government but for the population. Fredman and Young propose a draft clause to be inserted into the Repeal Bill to prevent any derogations of existing rights.⁸⁰ Whilst the formulation of such a clause is an important safeguard to protect rights, it is also important that it not be drafted in such a way as to make any potential positive changes facilitated by Brexit difficult to enact. The absolutist language such as writing in the negative using the word ‘no’⁸¹ and phrases such as ‘or otherwise modify’⁸² and the inclusion of ‘amending’⁸³ as well as ‘repealing’⁸⁴ presents connotations that any change or progress that might happen post-Brexit will always be negative. Whilst it is important that there are safeguards against unilateral change, it is necessary to avoid overly paternalistic safeguards which disempower people against social institutions by implication rather than fact. For example, it would be difficult if UK stakeholders wanted to introduce higher standards than those of the EU at any point in the future. However, they offer another formulation which removes the paternalistic elements of the previous and permits positive changes where applicable:

‘ministerial powers to amend, modify or repeal primary legislation can only be used if:

- (i) the provision does not prevent any person from continuing to exercise any right or freedom which that person has by virtue of the Equality Act 2010 or other provisions previously derived from EU law which protect equality rights; or
- (ii) the provision is not of constitutional significance.’⁸⁵

⁷⁹ *Ibid.*

⁸⁰ S Fredman & A Young n.75.6-8

⁸¹ *Ibid.* 7

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *Ibid.* 8

The language is positive rather than negative which suggests that there is an element of reciprocity between parliament and citizen but accepts the possibility that any future change may be positive rather than negative. The clause regarding enactment and equality⁸⁶ mirrors amendments to the Great Repeal Bill suggested in the light of concerns relating to equality that states that ministers must ensure an Equality Impact Assessment based on protected characteristics under EqA 2010, prior to any deal being made with the EU.⁸⁷

However, a potential difficulty is that though both clauses express the need to ensure that impact assessments are undertaken with regard to equality for any proposed changes, these have been difficult to achieve in the context of disability because of a lack of extrapolated information existing to enable government departments, including the Treasury, to focus on the needs of people with disabilities.⁸⁸ Consequently, people with disabilities, academic institutions working on Disability law and DPOs must be sufficiently empowered to ensure that any equality impact assessments are meaningful and voice any criticisms and to advocate both as individuals and in groups for change where necessary. At royal assent on 16 March 2017, no mention of Equality impact assessments appeared within the Bill. However, it is hoped that when negotiations begin in earnest, the focus on equality will be applied to stages of negotiation to mirror the current protection.⁸⁹

⁸⁶ *Ibid.* 9.

⁸⁷ See House of Commons 'Notices of amendment given up to and including Tuesday 31 January 2017 European Union (Notification of Withdrawal) BILL' 31 January 2017.

⁸⁸ House of Lords, 'Select Committee on the Equality Act 2010 and Disability The Equality Act 2010: the impact on disabled people Report of Session 2015-16 HL Paper 117' (www.parliament.uk, 24 March 2016)

<<https://www.publications.parliament.uk/pa/ld201516/ldselect/ldeqact/117/11702.htm>> accessed 27 February 2017 Para. 369

⁸⁹ Crown Commercial Service 'A Brief Guide to the 2014 EU Public Procurement Directives' October 2016 s.20.1.

Articles in specialist media outlets such as *Stammering Law*⁹⁰ have also emphasised the negative aspects rather than any potential opportunities of Brexit, not only through obviously negative language but through the use of rhetorical devices such as parenthesis to shift the reader's eye focus to negative phrases such as 'and perhaps repeal' and to draw focus away from 'though not relevant legally.'⁹¹ Moreover, bracketed portions of text mirror the internal dialogue that the reader may have been having with themselves as they engage, thus amplifying the disquieting effect.

Participation

Lawson has highlighted the importance of participation at all levels in the wake of Brexit.⁹² The Papworth Trust produced 'Brexit: What next for disabled people?',⁹³ which took a more empowered stance to other documents by highlighting post-referendum opportunities for people with disabilities such as potential opportunities for better UK alternatives to failed EU policies for example, the building of more housing association homes that would be accessible to people with disabilities.⁹⁴ They argued that the vote could present an opportunity for a change in attitude in relation to the unfair cuts to disability benefits and employment support allowance.⁹⁵ It highlighted that Brexit may present an opportunity for accelerating the pace of change particularly given the higher level of implementation of Disability rights in the UK than in the EU.⁹⁶ The booklet cites the example of America as a country whose Disability rights legislation developed outside of the EU in the face of much

⁹⁰ *Stammering law* n. 67.

⁹¹ *Ibid.*

⁹² Anna Lawson acceptance speech, Equal Rights Trust Bob Hepple Award 2016, 30 June 2016.

⁹³ Papworth Trust, 'Brexit: What next for disabled people?' (*papworthtrust.org.uk*, September 26th 2016) <<http://online.flipbuilder.com/afjd/wpxb/>> accessed 20 March 2017.

⁹⁴ *Ibid.* 47.

⁹⁵ *Ibid.* 48

⁹⁶ *Ibid.*

opposition.⁹⁷ Brexit discussions have centred on the practical manifestations of citizenship, key to developing the disability rights framework, independent living and access to transport.⁹⁸ Lack of freedom of movement for work could shrink the employment pool of Personal Assistants (PA).⁹⁹ Directives making train and buses accessible at the point of build¹⁰⁰ have not been incorporated into domestic law meaning they could be easily repealed.¹⁰¹ Removing the ability to live and travel within the community undermines personhood and dignity.¹⁰²

However, Baroness Masham's response to these responsibilities highlights stereotypes of those providing support to people with disabilities.¹⁰³ 'I am very concerned when I hear members of the Government say that we want to let in only the brightest people when Brexit takes place.'¹⁰⁴ This reinforces that caring and assistant jobs are seen as low status and fails to acknowledge the importance of these roles in ensuring human rights of people with disabilities. 'We do not have enough British people who want to do such jobs'¹⁰⁵ demonstrates that anything relating to disability is viewed as the separate province of people with a particular desire to work in such fields. This is compounded by the assertion that 'they do not need to be high-fliers, but they need to

⁹⁷ *Ibid.*

⁹⁸ ENIL, 'ENIL Against BREXIT' (*enil.eu*, 7 April 2016) <<http://enil.eu/news/enil-against-brexit/>> accessed 20 March 2017.

⁹⁹ *Ibid.* See also House of Lords Hansard, 'Brexit: Disabled People ' Volume 778 (*hansardparliament.uk*, 02 February)

<<https://hansard.parliament.uk/lords/2017-02-02/debates/BF5C6387-2D05-403D-A0E8-ABB6BA4E4DF6/BrexitDisabledPeople>> accessed 20 March 2017.

¹⁰⁰ See Regulation (EU) No 181/2011 of the European Parliament and of the council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 [2011] OJ 2 55/1 and Commission Decision of 21 December 2007 concerning the technical specification of interoperability relating to 'persons with reduced mobility' in the trans-European conventional and high-speed rail system [2008] OJ 2 64/74 and Regulation (EC) No 1371/2007 of the European Parliament and of the council of 23 October 2007 on rail passengers' rights and obligations [2007] OJ 2315/14/1.

¹⁰¹ See The Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010, SI 2010 No 432 1 Schedule 1 and The Public Service Vehicles Accessibility Regulations 2000, SI 2000 No 1970.

¹⁰² G Quinn, Rethinking personhood: New Directions in Legal Capacity Law & Policy. Or How to put the 'Shift' back into 'Paradigm Shift' (1st, University of British Columbia, Vancouver, Canada 2011) 17

¹⁰³ House of Lords Hansard, 'Brexit: Disabled People ' Volume 778 (*hansardparliament.uk*, 02 February) <<https://hansard.parliament.uk/lords/2017-02-02/debates/BF5C6387-2D05-403D-A0E8-ABB6BA4E4DF6/BrexitDisabledPeople>> accessed 20 March 2017.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

feel wanted and to be cherished.’ ‘Cherished’ indicates people with saintly qualities that we must look after lest their duties fall to society at large and who are so selfless as to sacrifice high-flying careers to do so. Interestingly her statement that ‘the Government have a responsibility to enable disabled people to live as independent lives as possible’ is indicative of the need to inculcate a sense of proactive critical citizenship into people with disabilities and the wider society. The belief or assertion that it is the government’s duty to take care of such rights is disempowering because it fails to acknowledge that individuals have the right to direct their own lives. It divests people with disabilities of ownership of their rights by transferring the practical power into another person or institution’s hands. This is dangerous in the context of disability as it mirrors institutionalised living where people with disabilities lost control of their rights, which were superseded to organs of the state. Though it is possible to argue that Baroness Masham’s words are little more than oratory in the House of Lords, it is arguable that such rhetoric and images build up in the conscious of people with disabilities and society perpetuating stereotypes and images of dependence.

Education as a form of participation and a means to advance, promote and protect the human rights of people with disabilities

Several UK academics have made statements about the potential effects of Brexit on English Law degrees. The University of Bristol stated ‘you could be at the forefront of a new legal frontier,’¹⁰⁶ with increased legal jobs.¹⁰⁷ Professor Mark Elliot from University of Cambridge stated that it would be unlikely that there would be an immediate change to what students would study because although it would lay to rest debates about parliamentary sovereignty, the interaction between EU Law and UK

¹⁰⁶ University of Bristol Law School, ‘Brexit: Why there has never been a better time to study law’ (www.bristol.ac.uk, 13 October 2016)

<<http://www.bristol.ac.uk/law/news/2016/brexit-studying-law.html>> accessed 20 March 2017.

¹⁰⁷ *Ibid.*

Law has revealed important things about sovereignty and our constitution which would remain relevant.¹⁰⁸ Disability Law and legal education straddles both of these lines of argument concerning EU withdrawal because the EU had a key role in the formation of a number of legal developments concerning people with disabilities and their rights such as the Disabled Air and Sea Passengers Regulation¹⁰⁹ which academics such as Lawson¹¹⁰ highlight have been instrumental in developing all-encompassing legal protection for people with disabilities which were not part of the domestic framework prior to EU involvement in law relating to disability, which could be directly applied at the domestic level automatically. Whilst agreed EU law is likely to remain part of the domestic framework¹¹¹, this past development exemplifies the potential risk of Brexit to the advancement of the rights of people with disabilities in future if links are not explained to law makers and students moving forward. It is necessary that, any approach to the law and disability present students with the opportunity to consider which laws are most important in maintaining and protecting existing rights and engages in debates around innovation where necessary. To achieve this, any liberal legal curriculum must represent these interests so that they do not fall by the wayside and encourage self-advocacy with support.

A particular element of accessible education which might be affected by Brexit is the use of websites, if a proposed accessibility directive is not passed¹¹² and incorporated into domestic law before Brexit occurs. The status of the Directive on the accessibility

¹⁰⁸ M Elliot quoted in K Baker, 'How might a Brexit affect students' law degrees?' (*www.theguardian.com*, 11 March 2016) <<https://www.theguardian.com/law/2016/mar/11/how-might-a-brexit-affect-students-law-degrees>> accessed 20 March 2017.

¹⁰⁹ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 [2004] OJ 2 46/1.

¹¹⁰ A Lawson quoted in J Pring, 'EU laws 'have played crucial role' in fight for disability rights' (*disabilitynewsservice.com*, 9 June 2016) <<http://www.disabilitynewsservice.com/eu-laws-have-played-crucial-role-in-fight-for-disability-rights/>> accessed 21 March 2017.

¹¹¹ Caird n. 77.

¹¹² Directive of the European Parliament and of the Council on the accessibility of the websites and mobile applications of public sector bodies [2016] OJ 2 327/1 /1.

of the websites and mobile applications of public sector bodies,¹¹³ requiring local authorities and bodies governed by public law, have accessible websites for people with disabilities,¹¹⁴ has implications for education. There are exemptions for NGOs ‘that do not provide services that are essential to the public, or services that specifically address the needs of, or are meant for, people with disabilities.’ That the work of NGOs is not essential to the public, demonstrates the privileged viewpoint of the drafter who cannot foresee that they may need such organisation to assist them.¹¹⁵ The work of NGOs and the needs of their clients means that their websites need to be more accessible, than less. Under the Directive, a university is a public-sector body, meaning that it applies to educational websites and virtual learning environments. However, the directive exempts recorded and live video and audio media, published before 23 September 2020,¹¹⁶ meaning that there would be no pressure on universities to make key learning resources such as lecture recordings accessible. This could place distant learners with disabilities at a greater disadvantage than others. Article 5 of the directive states that ‘[...] requirements do not impose a disproportionate burden on the public sector bodies [...]’.¹¹⁷ This demonstrates the primacy of economic prudence over the rights of people with disabilities. One factors used to ascertain whether an undue burden exists is ‘the estimated costs and benefits for the public sector body concerned in relation to the estimated benefits for people with disabilities, taking into account the frequency and duration of use of the specific website or mobile application.’¹¹⁸ This is an example of people with disabilities having to justify their access on the basis of numerical usage rather than the reason for usage which does not apply to people without disabilities. Although there is a requirement in the article that ‘Where a public sector body avails itself of the derogation provided for in paragraph 1 of this Article

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.* Art. 1 3(b)

¹¹⁶ *Ibid.* Art. 1 64 4(b) and 3(6).

¹¹⁷ *Ibid.* Art.5 (1).

¹¹⁸ *Ibid.* Art.5 (2)(b).

for a specific website or mobile application after conducting an assessment[...]it shall explain, in the accessibility statement referred to in Article 7, the parts of the accessibility requirements that could not be complied with and shall, where appropriate, provide accessible alternatives.¹¹⁹ This echoes the Action Plans at the UN level and the Equality Act 2010, which have limited effects of making meaningful changes in practice, discussed in preceding chapters. The EU has given Member states until 2018¹²⁰ to transpose the directive into national law, so it is uncertain whether this will be transposed into UK law in time, as the UK government triggered Article 50 of The Lisbon Treaty on 29th March 2017.¹²¹ English universities could present their websites and virtual learning environments as exemplars for the principles of the Directive, regardless of its status in domestic law. This could provide a model for civil society, which could go above and beyond the directive and provide examples and inspiration at the EU level through the academic network. Additionally, this could be used as a practical learning exercise with students, as a familiar example and illustration of the importance of access to society for people with disabilities and how this may be achieved in practice. Other examples of the limits of the legislative process to produce change are the continuing negotiations around a draft European Accessibility Act,¹²² the majority of the provisions of which are already part of EQA 2010 apart from provisions governing access to ATMs and banking services, general product design (for new to market products only) and other communications. However, this is yet to be ratified by the EU itself. Consequently, with regard to the present project, it is arguable that in a post-Brexit context, the inclusion of continuing an historic European innovations in relation to the rights of people with disabilities

¹¹⁹ *Ibid.* (4).

¹²⁰ Europa, 'Web Accessibility' (*DIGITAL SINGLE MARKET Digital Economy & Society*, 09 January 2017) <<https://ec.europa.eu/digital-single-market/en/web-accessibility>> accessed 31 March 2017.

¹²¹ HM government, 'Prime Minister's Commons statement on triggering Article 50' (Plan for Britain, 29 MARCH 2017) <<https://www.planforbritain.gov.uk/?gclid=CPqJ1-72gNMCFWcq0wodfS8N-g>> accessed 31 March 2017.

¹²² Proposal for a Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services. 2015/0278 (COD) See Annex 1, 2 and 3.

will continue and safeguard the exchange of ideas between Britain and other European countries at the academic level to present a possible way of the symbiotic relationship and improvement of the status of people with disability between the two entities whilst permitting innovation in areas that have perhaps been curtailed by the boundaries of both or either entities at certain points.

Economics

The Brexit vote has increased uncertainty around expenditure on disability related projects. A major example of this is the status of funds provided by the EU such as the structural fund which funded 19% of funded Disability related projects in the UK.¹²³ Moreover, the UK government European Social Fund Operational Programme between 2014-2020 highlighted that key areas for community led development focused on the needs of people with disabilities to ensure general community inclusion and participation in employment.¹²⁴ If this source of funding is removed, people with disabilities may be left unable to access support they need if alternative funding at the domestic level is provided. Civil society and the governments need to have a full understanding of what this funding means to people with disabilities. Consequently, people with disabilities need to be able to communicate this and to make arguments to ensure that funding is preserved. It is argued here that this is best done when those advocating have an adequate understanding of the law and the needs of people with disabilities which is best achieved through education. Moreover, Helios referred to the provision of EU social funding and access to education for people with disabilities, indicating that any loss of this funding could have a severe impact on the ability of people with disabilities to access higher education. As a consequence this may present

¹²³ “Annotated review of European Union law and policy with reference to disability,” ANED, <http://www.disability-europe.net/> referenced in Papworth Trust, 'Brexit: What next for disabled people?' ([papworthtrust.org.uk](http://www.papworthtrust.org.uk), September 26th 2016) <<http://online.flipbuilder.com/afjd/wpxb/>> accessed 21 March 2017.

¹²⁴ DWP, 'European Social Fund Operational Programme 2014-2020' [2015] See for example 9, 69, 74, 79, 100, and 156.

another barrier to them engaging directly in debates through these avenues.¹²⁵ It is important that the dialogues are brought into further and higher education, not only to equip people without disabilities to engage in the debates as an academic endeavour, but to offer the opportunity for it to become part of university civic engagement to disseminate research. Additionally, the community led development advice pages of the European Social Fund suggest that a useful approach for managing authorities to follow is the seven fundamental principles advocated by Budzich-Tabor.¹²⁶ First is the bottom-up approach whereby the local community identify needs and challenges and proposes solutions and defines projects.¹²⁷ It argues that there should be an integrated approach between bottom-up and top-down for the best results which forms the second principle. There is a focus on partnership and an area-based approach whereby there is a system of peer learning and community development to resolve issues. Though the community led development structure makes reference to the work of NGOs.¹²⁸ In the context of the present project it is argued that universities could supplement such a role because they would be able to form a similar and bonded network through academia and discussion and be able to draw on community engagement and peer learning which may not be available to but would supplement the activities of NGOs and to ensure more voices are heard in the conversation. Thus, this would fulfil the final principles of innovation, cooperation and networking. Precedence for a similar system is already set in the higher education context with the development of collaborative doctoral partnerships as pioneered in the UK from around 2012 by organisations such as the Arts and Humanities Research Councils.¹²⁹

¹²⁵ European Commission 'Helios II European Guide of Good Practice: Towards Equal Opportunities for Disabled People' 1996, Council Decision of 18 April 1988 establishing a second Community action programme for disabled people (Helios) (88/231 /EEC) and European Commission, 'COM(91) 350 final' (*europa.eu*, 1991) <http://europa.eu/rapid/press-release_P-91-70_en.htm> accessed 3 November 2017.

¹²⁶ European Commission, 'CLLD - A useful approach for ESF' (*ec.europa.eu*, 13 September 2016) <<http://ec.europa.eu/esf/transnationality/content/clld-useful-approach-esf>> accessed 28 March 2017.

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

¹²⁹ Arts and Humanities Research Council, 'Collaborative Doctoral Partnerships' (*www.ahrc.ac.uk*, 2015) <<http://www.ahrc.ac.uk/funding/opportunities/archived-opportunities/collaborativedoctoralpartnerships/>> accessed 28 March 2017.

In a post-Brexit context, it becomes essential to ensure that people with disabilities do not end up at the bottom of a hierarchy for funding allocation and as a result see their access to rights regressing due to a lack of money. This thesis argues that if people have a greater understanding of the implications and needs of disability, and the legal framework surrounding it, which can all be communicated at one level by the inclusion of disability discourse into undergraduate legal education then wider society generally may have an understanding of the importance of impact and funding on improving the integration and participation of people with disabilities into society and thus become more receptive to arguments for resources thus meaning that people with disabilities have a chance to move up the hierarchy and receive the funding they need.

Reasonable Adjustment and Undue Burden

The relationship between the EU framework, disability and reasonable adjustment is complex. Quinn considers the relationship between the case law relating to the European Social Charter and the interpretation of EU anti-discrimination law¹³⁰, arguing that primarily it is a statement of ‘ideas and values’ demonstrated by the committee’s rejection of the idea of ‘separate but equal’ in relation to disability.¹³¹ He states that the Court of Justice of the EU (CJEU) should be encouraged to use the Framework Employment Directive as a tool to open up opportunities for the greater inclusion of people with disabilities in society to enshrine the right to belong.¹³² However, as discussed in the literature review, the reliance on a sense of shared ideas and values to drive or sustain change, particularly in a multi-state body such as the EU is difficult. Each state will have their own values, and the importance placed on disability within these structures may differ. Combined with the limiting aspects of the

¹³⁰ G Quinn, The European Social Charter and EU Anti-discrimination Law in the Field of Disability: Two Gravitational Fields with One Common Purpose. in G, de Burca and B de Witte (eds), *Social Rights in Europe* (OUP 2005) 279-304

¹³¹ *Ibid.* 303

¹³² *Ibid.* 302.

notions of reasonable adjustment and undue burden in placing automatic thresholds on resource allocation, it is arguable that they discourage states from thinking about disability differently and potentially making it a greater priority. Currently, states may conceptualise reasonable adjustment and undue burden as a box to be ticked to conform to the priorities and values of the countries where the concept originated, Britain¹³³ and the USA.¹³⁴ This is unlikely to encourage states to embrace the concept of equality and access on their own terms and to develop it in a collaborative and localised way. Furthermore, Quinn draws attention to the fact that the case law from the Charter reinforces the social model.¹³⁵ However, he cautions that the court should ensure that this attitude spreads throughout member states and that domestic courts should not be encouraged to adopt their own definitions.¹³⁶

Quinn's positivity about reasonable accommodation fails to consider at some level that these provisions place the 'problem' of disability back with the individual by creating thresholds for people with disabilities to access resources. Consequently, it is arguable that introducing students of liberal legal education to these debates surrounding the EU and disability Law, they have an opportunity to consider the true utility and value of notions of reasonable adjustments and undue burden in relation to the rights of people with disabilities and in a post-Brexit world, to consider the possibility of potential alternatives which more fully embrace shared social and cultural rights ideals to bring about true recognition for people with disabilities in practice.

Waddington highlights that lack of European wide consistency of definitions of what constitutes reasonable adjustment and undue burden under Article 5 of the framework

¹³³ A Lawson, *Disability and Equality Law in Britain: The Role of Reasonable Adjustment* (Hart Publishing 2008) 6-7.

¹³⁴ UNGA, 'Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of People with disabilities', The Concept of Reasonable Accommodation in Selected National Disability Legislation. (Seventh session New York, 16 January-3 February 2006) (A/AC.265/2006/CRP.1).

¹³⁵ Quinn n.130. 303-304

¹³⁶ *Ibid.* 304.

directive means that different states have different thresholds for what is reasonable.¹³⁷ The Finnish document makes no reference to undue burden whereas in the Belgium documents disproportionate burden defines a reasonable adjustment. In Germany both the concept of reasonableness and undue burden are used to limit expenditure.¹³⁸ The Dutch statute requires an 'effective accommodation' meaning that any changes must enable the person to do the job and be necessary in achieving that goal.¹³⁹ Waddington criticises the drafting of the directive for failing to include a definition of a reasonable adjustment and an undue burden and moving the question of burden to the point after the assessment has been made rather than collocating the reasons for not making a reasonable adjustment and the idea of it together.¹⁴⁰ She cites the DDA 1995 as providing an elaboration on whether or not an adjustment is reasonable and references the fact that the DDA makes reasonable adjustment anticipatory in relation to goods and services but that there was less guidance in other contexts apart from employment where clear factors such as effectiveness, practicability, cost, disruption and resources and amount already spent and availability of assistance should figure in any calculations.¹⁴¹ Waddington et al¹⁴² highlight the arbitrariness of 'reasonable adjustment.' If it can be extended to people with disabilities, why not other minority groups? She rightly claims the decision by the Dutch legislature to change its vocabulary from 'effective accommodation' to 'the need for 'full and effective' access to society for people with disabilities leads to the question as to what would happen if a required adjustment either in practice or hypothetically was deemed effective but placed undue burden on a service provider or respondent. It is these internal inconsistencies that highlight the weakness of the concept of reasonable adjustment and undue burden generally as they will always set parameters around the access to

¹³⁷ L. Waddington, 'When it is reasonable for Europeans to be confused: Understanding when a Disability accommodation is "reasonable" from a comparative perspective' [2007-8] 29(3) *Comp Lab L & Pol'y J* 317.

¹³⁸ *Ibid.* 324-325.

¹³⁹ *Ibid.* 331.

¹⁴⁰ *Ibid.* 335-336.

¹⁴¹ *Ibid.* 337-338.

¹⁴² *Ibid.* 317.

rights. It is not these parameters that are problematic but the rhetoric in which they are expressed. 'Burden' is suggestive of a heavy load which must be carried which maintains people with disabilities are in an object rather than subject category in relation to their rights. This arbitrariness and changes to other frameworks in terms of reasonable adjustment and undue burden indicates the possibility for reform in the domestic context, presenting the consideration of an alternative as an academic exercise for both students and researchers.

Limits of Legislative Process

The European Disability Strategy was first initiated in response to the European Year of People with Disabilities in 2003 and the initial period ran from 2003-2010.¹⁴³ The main aim of this strategy was to implement disability mainstreaming and barrier removal within European Policy as a whole with a particular focus on economics and employment.¹⁴⁴ This mandate was extended from 2010-2020 at the end of the first period.¹⁴⁵ This longer term strategy covered similar areas such as education and training but like other reports demonstrated a high gap between educational attainment for those with disabilities and those without, particularly the more serious disabilities¹⁴⁶ like the CRPD Committee's Report¹⁴⁷ on the EU, demonstrated that gaps exist in terms of the implementation of rights for people with disabilities across the Union in relation to access to education. A lack of attainment in further and higher education was

¹⁴³ EPR, 'The EU Disability Strategy 2010-2020 Analysis paper' (*epr.eu*, 2011)
<http://www.epr.eu/images/EPR/documents/policy_documents/The%20EU%20Disability%20Strategy%20Analysis%20paper.pdf> accessed 28 March 2017.

¹⁴⁴ *Ibid.*

¹⁴⁵ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe' (*eur-lex.europa.eu*, 15 November 2010)
<<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0636:FIN:en:PDF>> accessed 28 March 2017.

¹⁴⁶ *Ibid.*

¹⁴⁷ Committee on Employment and Social Affairs REPORT on the implementation of the UN Convention on the Rights of People with disabilities, with special regard to the Concluding Observations of the UN CRPD Committee 2016, 2015/2258(INI) See for example 6 para (b).

highlighted by an ANED Report¹⁴⁸ and that there are many changes needed before the Disability Strategy will be fully implemented in key areas of citizenship and participation. It demonstrated that participation in areas of education are lower for people with disabilities than those without, and the barriers that present particular difficulties, originate from legal and organisational practices.¹⁴⁹ Whilst the UK may have made the decision to leave the EU as a result of the Brexit referendum, endeavours to incorporate Disability perspectives into liberal legal education and consideration of the barriers to such an education at both practical and attitudinal basis for people with disabilities may present a key collaborative effort that the UK could share with the EU to address barriers identified in the strategy, as encouraged under article 33 of the CRPD. This could enable the UK to maintain a reciprocal and information sharing and awareness raising relationship with the EU concerning disability which has been identified in much of the Brexit rhetoric surrounding disability as a key aspect of ensuring and promoting the rights of people with disabilities both domestically and at a supranational level.

Schiek argues that European Law in relation to disability could be strengthened by recognising the existence of intersectionality in its development of a working definition of disability for anti-discrimination law.¹⁵⁰ She comments that the move from medical to social model is not the solution. Rather, there should be a definition for all discrimination grounds derived from the purpose of anti-discrimination law; protection against harm and exclusion on the grounds of others, whilst respecting individuality and difference.¹⁵¹ She argues that the common rationality between all anti-discrimination law means that it is inclusive of all grounds and reinforces an overall

¹⁴⁸ ANED Report by S Ebersold, M José Schmitt and M Priestley 'Inclusive Education for young disabled people in Europe: Trends, Issues and challenges. A synthesis of evidence from ANED country reports and additional sources' April 2011 Section 3.6.

¹⁴⁹ *Ibid.* 8.

¹⁵⁰ D Schiek, 'Intersectionality and the Notion of Disability in EU Discrimination Law' [2016] 53(1) Common Market Law Review 62.

¹⁵¹ *Ibid.*

goal of all the protected characteristics.¹⁵² She asserts that this approach would assist in addressing existing approaches to disability which can often require that people reach the threshold for protection based on a particular level of impairment.¹⁵³ Moving away from this, will challenge stereotype images and understanding of disability which result in exclusion rather than inclusion which will place the focus on society's inflexibility or willingness to adapt, though Schiek is clear to acknowledge that impairment will always be a starting point for acknowledging disability.¹⁵⁴ This highlights that inherent limitations on providing reasonable adjustment and occupational exemptions will mean that in some cases the role of discrimination law to bring about full participation by people with disabilities in society, which Schiek argues means that the role of discrimination law is potentially lost and by widening the scope and understanding by highlighting the relationship between discrimination grounds will make it more effective in achieving its aim.¹⁵⁵ The recent *HK Danmark case*¹⁵⁶ provides an example of this type of consideration as the court found that employers have to take steps to accommodate workers with disabilities which may result in increased levels of illness to ensure that they are not unfairly discriminated against with regard to dismissal in comparison to workers without disabilities. However, it is unfortunate that the economic element of these considerations takes precedent within the ruling.¹⁵⁷ The present thesis argues that if people with disabilities and law students were given greater insight and understanding of disability discrimination law, they would see that the domestic application of the Equality Act, providing a single coherent protection for all those with protected characteristics, presents a possibility of achieving Schiek's aim and in a post-Brexit world.

¹⁵² *Ibid.*

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*

¹⁵⁶ *HK Danmark v Dansk* [2013] OJ 1 156/6.

¹⁵⁷ Equinet European Network of Equality Bodies, 'CJEU clarifies the concept of disability' (*Equineteurope.org*, 18 April 2013) <<http://www.equineteurope.org/CJEU-clarifies-the-concept-of>> accessed 13 July 2018

Political participation is key to enabling people with disabilities to exercising Proactive Critical Citizenship, by engaging with the government through voting choices. Priestley et al discuss the role of electoral participation and activism in Europe for people with disabilities.¹⁵⁸ Priestley et al discuss access to voting rights and political participation in Europe, highlighting a number of difficulties for people with disabilities in this area including access to public transport, telecommunications and the lack of accessibility requirements on political parties in the way in which they communicate with the electorate. These factors meant that they have been marginalised from public life requiring campaigners and politicians to reach out to them in order that they may engage meaningfully with the policy process. They argue that people who experience political marginalisation may be better engaged by talking about concerns publicly and engaging with civil society organisations that represent their view.¹⁵⁹ They align political participation with a form of activism for people with disabilities¹⁶⁰ and argue that political participation has been widened to include lower level forms of activism such as signing petitions and online engagement.¹⁶¹ They argue that the denial of voting rights and political engagement particularly by those who are denied legal capacity to vote could be seen as a limit to the rights of people with disabilities to engage in activism.¹⁶² When viewed in this light then the argument in the present project gains greater credence because if people with disabilities struggle to engage with the political process at the earliest level which may mean that they have a reduced say in who is elected to make an enforce laws concerning them, then the right to review these laws in terms of both civil and academic engagement in relation to disability perspective in the post-political stages becomes even more important. Consequently, the incorporation of disability perspectives in liberal legal education at the undergraduate

¹⁵⁸ M Priestley and others, 'The political participation of disabled people in Europe: Rights, accessibility and activism' [2016] 42(1-9) *Electoral Studies*.

¹⁵⁹ *Ibid.* 7-8.

¹⁶⁰ *Ibid.* 2.

¹⁶¹ *Ibid.* 7.

¹⁶² *Ibid.*

level may provide a way to redress the gaps in such a fundamental element of exercising citizenship in Europe. Additionally, the fact that this has been identified within the European context in relation to disability means that in a post-Brexit world the UK and those involved in ascertaining political opinion through forms of voting or any other means of public engagement in relation to the outcomes and impact of Brexit means that more thought would be required to ensure that the voices of people with disabilities are heard and represented. Governments and lawyers will need to be more aware of the need for people with disabilities to have a greater sense of their rights to ensure that their voices are heard through inculcating a sense of proactive critical citizenship amongst people with disabilities and wider society.

Quinn argues for responsive policies in relation to disability and market regulation and employment, through knowledge gathering and research, and that new social provisions should be enacted to enable to provide impetus for change moving forward within civil society and where possible the confusion of a legal base for social action plans should be avoided.¹⁶³ The focus and praise for the economic approach to access rendered by the notion of reasonable adjustment and the need to cost out adjustments without leading to ‘disproportionate economic consequences’¹⁶⁴ inherently weakens rights-based focus as it places economics before and above rights. Whilst it is evident that NGOs played an important role in driving the call for change, this role should not be overstated and should always be contextualised around the representativeness of NGOs of a disability community, when many cannot access them nor desire to.

Conclusion

This chapter has argued that, whilst the advent of Brexit produces several challenges within the framework concerning the rights of people with disabilities, it presents many

¹⁶³ *Ibid.*

¹⁶⁴ *Ibid.*

opportunities. Opportunities for people with disabilities and those involved in assisting them with access to their rights to set their own agenda and to make sure that any changes are implemented in as positive a way as possible to ensure that people with disabilities do not lose what they gained by European Membership with the possibility to potentially gain more than they had before and write their own agenda moving forward. However, people with disabilities and society generally can only achieve this if there is greater generalised understanding of the importance of human rights and disability rights. A potential way of achieving this, is to draw together the strands of rights education, legal processes and implementation through the inclusion of these discourse in liberal legal education to consider possible avenues for change. The next chapter will examine the strengths and weaknesses in the English legal framework concerning the protection of the rights of people with disabilities and access to education. Discussions will be contextualised within both the supranational and European framework where necessary and will consider the development of the legal framework providing access to education for people with disabilities at all levels, as this exemplifies the importance of the relationship between human rights, law, disability and education.

Chapter 5: UK domestic framework, access to liberal legal education and

Proactive Critical Citizenship

This chapter concerns the UK domestic framework. Firstly, it will examine the relationship between education and dignity and other human rights and its relationship with the supranational and international frameworks discussed in the preceding chapters. Secondly, it considers the relationships between education and participation within society and the human rights of people with disabilities. It explores how incorporating of a disability perspective into undergraduate legal education can both support and advance these endeavours in practice. The second half of the chapter will consider the effects of the thematic issues: economics, reasonable adjustments, and the limits of legislative process and potential role of Liberal Legal Education both in terms of creating a sense of Proactive Critical Citizenship in addressing them.

Dignity

In the Equality Act 2010¹ dignity functions as a moral emblem² in the English human rights framework. However, as a ratified signatory state of the CRPD³ all domestic legislation must be compatible with the aims of the convention.⁴ Specific UK legislation for the protection and provision of services for people with disabilities arrived in the 1970s.⁵ The Chronically Sick and Disabled Persons Act of 1970 legislated for people with disabilities to access toilets and buildings in relation to schools, university and other education buildings.⁶ This is late compared with legislation

¹ Section 26 (1) (b)

² See 'Dignity' on Literature Review

³ United Nations , 'UN Enable CRPD and Optional Protocol Signatures and Ratifications' (*Division for Social Policy Development*, November 2017)

<<http://www.un.org/disabilities/documents/maps/enablemap.jpg>> accessed 14 March 2018

⁴ Vienna Convention on the Law of Treaties 1969 Arts.2 (1) (b), 14 (1) and 16,

⁵ M Close, 'Timeline History of the Disabled People's Movement' (Disability Equality 2011) <<http://www.disability-equality.org.uk/uploads/files/fb979acea0dfe4ec8163fc610ffcf305.pdf>> accessed 23 October 2014.

⁶ Chronically Sick and Disabled Persons Act 1970 s. 8

concerning gender or race.⁷ Particularly in light of Priestley's lifecourse approach to disability.⁸ He argues that an increasingly older population may be more likely to experience impairment and touches on the tendency not to define this group of people as disabled in the traditional sense unless they were unable to carry out the same functions as a 'normal elderly person'.⁹ Priestley comments that the commonality between the experiences of disability and ageing mean that it would be beneficial for the two social policy areas to be treated as one rather than separate entities¹⁰ to ensure greater collaborative advocacy to improve the rights of both groups.¹¹ However, he notes the resistance of both older people and people with disabilities to consider the experience of ageing and disability as the same or similar processes.¹²

Conversely, Macnicol considers whether age discrimination is fundamentally different from race or sex discrimination for some groups.¹³ There is no tragic historic legacy of ageism as there is for race discrimination. There is no natural response of recompense or corrective justice.¹⁴ However, Macnicol argues that this ignores the impact of the past sufferings of older people in Poor Law infirmaries, demeaning casual jobs and domestic poverty which were merely kept from public gaze.¹⁵ The Poor Laws had an impact on the position of people with disabilities, as well as elderly, who were deprived of their civil rights and compulsorily on the grounds of mental impairment and could be locked or chained in the workhouse based on the extent of the impairment.^{16,17}

⁷ Equality UK, 'Equality Time Line' <<http://www.equalityuk.org/time-line/>> accessed 23 October 2014.

⁸ M Priestley, *Disability: A Life Course Approach* (1st, Polity Press, Cambridge 2003) 143.

⁹ *Ibid.* pp 151-152

¹⁰ M Priestley & P Rabiee, 'Building Bridges: Disability and Old Age' <<http://disability-studies.leeds.ac.uk/research/building-bridges-disability-and-old-age/>> accessed 26th January 2015.

¹¹ *Ibid.* 2.

¹² *Ibid.* 9-10.

¹³ J Macnicol, *Age Discrimination: An Historical and Contemporary Analysis* (1st, Cambridge University Press, Cambridge 2005) 24.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ A Borsay, *Disability and Social Policy in Britain since 1750* (1st, Palgrave Macmillan, Hampshire 2005) 20-21.

¹⁷ The Poor Laws were repealed by the National Assistance Act 1948

However, unlike elderly people, people with disabilities were subjected to systematic introduction of modes of correction for disabilities to remove evidence or consequence of their impairment and integrate them into society.¹⁸ Arguably, this fundamentally separates the social attitude to disability to that of ageing. Age associated surgery such as hip replacement only carried out when a patient has end-stage hip arthritis where the joint is '[...] to relieve pain and disability associated with end-stage arthritis of the hip completely.'¹⁹ Borsay highlights that most procedures in terms of disability were carried out on children or infants as a corrective rather than restorative procedure.²⁰ It is this sense of pre-emptive correction before the damage happens or reveals itself that separates the medical responses to ageing and disability. Another element which Macnicol highlights as being viewed by some as separating age discrimination from other types of discrimination is the opinion that whilst not everybody may grow to be black or white, or male or female, or even have a disability, everybody will grow old. Therefore, discrimination on these not immutable characteristics is a more obvious and discriminatory form of bigotry than discrimination against people on the grounds of age.²¹

The Mental Deficiency Act 1927 showed that labels could be punitive. Labels such as 'Moral defectives'²² were assigned with little medical basis to facilitate the admission of people perceived as deviant to asylums.²³ The 1913 Act makes direct reference to incarceration²⁴ as an alternative punishment for 'moral imbeciles'.²⁵ Section 2 of the

¹⁸ Borsay n. 16. 49-61.

¹⁹ National Institute Health and Care Excellence Guidance, 'Total hip replacement and resurfacing arthroplasty for end-stage arthritis of the hip Technology appraisal guidance' [26 February 2014] 34

²⁰ Borsay n. 16.

²¹ Macnicol n. 13. 25-26.

²² Mental Deficiency Act 1927 s. 1(d) not repealed until 1959 when definitions were changed.

²³ J Walmsley, 'Women and the Mental Deficiency Act of 1913: citizenship, sexuality and regulation' [2000] 28(2) *British Journal of Learning Disabilities* 67-68

²⁴ Mental Deficiency Act 1913 s 2 (1)

²⁵ *Ibid.* s. 1(d).

1913 Act lists circumstances where a person may be committed to an institution. These include a person who: 'Is in receipt of poor relief at the time of giving birth to an illegitimate child or when pregnant of such child.'²⁶ The 1959 Mental Health Act removed the possibility of detention based on moral conduct.²⁷ Additionally, it gave new labels to mental health conditions. However, negative labelling continued with the inclusion of 'sub-normality' and 'severe sub-normality' to define people with psychosocial impairments.²⁸ Not only does it separate people with disabilities from those without, but implies that they are below the accepted standard. These examples reinforce the difficulty of relying on morality to regulate disability legislation. It is necessary for law students and people with disabilities to understand the social-legal development of the concept of and responses to disability, both to develop and understand the importance of Proactive Critical Citizenship, but also to contextualise any critique of the framework.

The Disability Discrimination Act (DDA) 1995 formally recognised the dignity of people with disabilities resulting from direct action by several DPOs.²⁹ It could be considered as a watershed moment for the concept of 'Proactive Critical Citizenship', because people with disabilities had assessed their situation within society and decided to take action against it. However, this focused on marches, protests and other public acts of defiance.³⁰ This was a product of its time and the culmination of large numbers of people with disabilities who had been previously excluded from society coming together at a particular point. It is questionable whether in the contemporary era, where people with disabilities have grown up with the benefits and the existence of the DDA, the EQA 2010 and the birth of the CRPD, with all their limitations, notwithstanding,

²⁶ *Ibid.* s2 (1)(b).

²⁷ Mental Health Act 1959 s 4(5).

²⁸ *Ibid.* s 4(2) and (3).

²⁹ C Gooding, *Blackstone's Guide to the Disability Discrimination Act 1995* (Blackstone Press Limited 1996) 3

³⁰ Scope, 'The Disability Discrimination Act 1995: The campaign for civil rights' (*youtube.com*, 2 November 2015)

<<https://www.youtube.com/watch?v=dwP1xuZZFuY>>accessed 15 May 2017

whether people would feel the necessary confidence or sufficient anger to protest en masse. Gooding argued that the enactment of several overseas civil rights acts such as the Americans with Disabilities Act and developments in Canada, Australia and New Zealand increased momentum.³¹ This swift development and parliamentary reaction to the DDA led to Gooding arguing ‘extensive exclusions, inadequate enforcement mechanisms, tentative draftmanship and concern for tight government control over its interpretation through the courts’ rendered the act ‘[...] a product of this last minute, half-hearted conversation, the haste with which the act has been produced creates an unfinished air, with many issues still unresolved.’³² Gooding considered that the newly drafted DDA differed from other antidiscrimination measures, namely, the Sex Discrimination Act 1975 and the Race Relations Act 1976, as under the DDA, direct discrimination can be legally justified, where the disability was deemed relevant to a person’s ability to perform certain job. In Gooding’s opinion this made the act ‘dangerously vague.’³³ She cites the inclusion of a more restrictive form of reasonable accommodation and reasonable adjustment adds to this.³⁴ Gooding criticised the lack of an enforcement body for the DDA 1995 as opposed to those available for Race and Sex discrimination and the ADA. The National Disability Council was described by Lord Lester as a ‘pathetically powerless quango.’³⁵ Gooding highlights that the 1995 Act left many of life’s key areas from its coverage including the police, prisons, armed forces and firms with fewer than twenty employees.³⁶ In the contemporary context it is arguable that the same critical eye should be turned on society as in 1995, but that in so doing, any criticism must take account of and focus on the existing apparatus of resistance against disability discrimination and this includes the DDA and later instruments. Giving law students, with disabilities and without, the space and skills to

³¹ Gooding n. 29.

³² *Ibid.* 2-3

³³ *Ibid.* 6

³⁴ *Ibid.*

³⁵ Hansard 22nd May 1995 815 quoted in C Gooding, *Blackstone’s Guide to the Disability Discrimination Act 1995* (Blackstone Press Limited 1996) 6

³⁶ Gooding n.29. 6

critique these within the liberal legal education landscape presents the opportunity to modernise and carry on the process of ‘proactive critical citizenship’ by allowing new voices with a new but shared history to be heard and to build upon what went before.

The Equality Act (EQA) 2010³⁷ built on the DDA. Section 26 EQA prohibits conduct that has the effect of violating a person’s dignity in relation to the specific protected characteristic.³⁸ The direct link to the fundamental concept of dignity and the behaviour of others in society, move focus from physical and structural means of discrimination. This presents an opportunity to explore the idea with students that all forms of interaction both directly with people with disabilities and issues concerning disability in the abstract, have the potential to either promote or denigrate disability rights. As such, they should think critically about several aspects of both the law, education and social practice in terms of the advancement of the human rights of all.

However, Proactive Critical Citizenship must always be three dimensional, nuanced making useful contributions to any discourse about the human rights of people with disabilities. Otherwise it may simply become a ‘buzzword’ without substance which is included in legislation and policy documents as a quick fix to ensure compliance and maintain confidence. There are several examples of references to the UK commitment under the CRPD to protect the rights of people with disabilities, including to education³⁹, dignity and participation being used in policy documents to inspire confidence in relation to these areas even though there is evidence to suggest from a recent Committee Report from the CRPD Committee highlights that the UK government is in violation of several its obligations under the Convention.⁴⁰ Moreover,

³⁷ EQA 2010

³⁸ *Ibid.* Part 2 Chapter 2 Section 26 (b)(i)

³⁹ United Nations, ‘Committee on the Rights of Persons with Disabilities Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland*’ CRPD/C/GBR/CO/1 (3 October 2017) 4,7,9,10,11,14,15

⁴⁰ *Ibid.*

there is a sense that the inclusion of these references, which are not backed up by references to specific domestic legislation and initiative to support them are done without any real understanding of their true meaning and value. A 2013 Fulfilling Potential Document from the Department for Work and Pensions (DWP) states that:

‘We stand firmly by the principles of the UN Convention on the Rights of Disabled People, and I am proud that the Joint Committee on Human Rights sees us as a world leader on both disability rights and independent living.’⁴¹

‘Standing firmly by’ something or a set of principles when there is evidence in the public domain to demonstrate this may not be the case, such as the ComRPD findings, suggests that the espoused commitment does not exist so strongly in practice.⁴² Moreover, the decision by the UK government to alter the title of the convention to ‘Convention on the Rights of Disabled People’ to superficially align it with social model thinking by placing the barrier which results in disability, before the person, to emphasise society’s role in creating it is disingenuous. It suggests a cavalier attitude that despite the status of the CRPD as a supranational document, the UK government is free to implement it and ingratiate it into domestic law as it sees fit rather than under specific guidance. There are no recorded examples of other countries changing the name of the convention in this way. A further problem is that in incorporating a supposedly social modelist approach to language within the convention the government have failed to do two basic things: Firstly, to make an explicit statement that they have done so either because they believe that the social model thinking about disability is the most pertinent way to achieve the aims of the convention in the domestic framework, or to state that they have a specific issue with the use of person first language in relation to disability after consultation with people with disabilities

⁴¹ DWP, ‘Fulfilling Potential: Making It Happen’ July 2013

⁴² United Nations, n.39.

and representative organisations in this country.⁴³ This leads to the conclusion that little thought has been given to the role of the social model in British society other than its terminology as the expected form and that all documents will be unquestionably changed to mirror that rather than it being any particular statement. Any discussions relating to human rights within the undergraduate curriculum must acknowledge dignity as an emblem and set of ideals, whilst ensuring that the emblem maintains the symbolic function for heralding changes in attitude rather than simply becoming a badge of compliance.⁴⁴

Participation

The Disability Discrimination Act 2005 (DDA)⁴⁵ extended the 1995 original and strengthen coverage in education and qualifications. Additionally, under the DDA 2005, many long-term health conditions could be considered as disabilities as was proven in several employment related cases.⁴⁶ These developments have assisted in the increase of participation within society and consequently the dignity of people with disabilities. Moreover, much like the inclusion of dignity within the concept of harassment in the DDA 1995, the introduction of indirect discrimination within the EQA 2010 presents another opportunity for students with and without disabilities to consider how neutral practice might negatively affect people with disabilities without consideration.⁴⁷ It is necessary that the curriculum, if it were amended, contain examples of several types of discrimination in various contexts to enable students to consider their effects, and where necessary they may be permitted under Section 19 (2)

⁴³ A House of Lords Review of the ratification of the CRPD by the UK in 2009 highlighted that there was very little consultation overall with people with disabilities and representative organisations and there is no evidence that the naming of the convention in the domestic context was discussed. House of Lords and House of Commons, 'Joint Committee on Human Rights - The UN Convention on the Rights of Persons with Disabilities' First Report of Session 2008-9 [4th January 2009].

⁴⁴ See Dignity on Literature Review.

⁴⁵ Disability Discrimination Act 2005. (DDA)

⁴⁶ See *Cox v Post Office* (case no. 1301162/97) and *Pousson v British Telecom plc* (2005 1 All ER (D) 34 (Aug) EAT).

⁴⁷ EQA 2010 s. 19

(a)-(c) of the EQA 2010 to familiarise themselves with the difference between concepts in theory and in practice.

Participation occupies a somewhat contentious space within recent policy documents. A number of them refer to the impact of the legacy of the 2012 Paralympic Games in both changing attitudes of the general public towards disability and people with disabilities.⁴⁸ Additionally, it is credited with increasing access and investment in infrastructure to permit increased participation by people with disabilities within British society.⁴⁹ Using events like the Paralympic Games to validate the experiences and rights of people with disabilities raises the issue of the ‘supercrip’ model. A number of disability scholars in recent years have argued that it is oppressive to people with disabilities and reinforces ideas that all people with disabilities should be able to accomplish similar feats than these supposed ‘supercrip heroes’⁵⁰ imply that societal barriers for people with disabilities can be overcome simply by being willing to put enough effort in rather than expecting society to alter its functions and behaviour to accommodate individualised needs. The ‘supercrip’ model promotes a hierarchy which places higher value on those bodies that can perform normal or greater than normal functions.⁵¹ Reeve suggests that the pressures of the ‘supercrip’ model and the attempt to emulate it, presents an example of psychoemotional disableism and internalised oppression because they do not permit themselves to view disability in terms of diversity and as such become a site of potential resistance and possibility.⁵² Another difficulty in placing such emphasis on the rights of people with disabilities within the frame of the Paralympics is that its genesis was in the crucible of the medical hierarchy.

⁴⁸ DWP n. 41. 10 Para. 2.3.

⁴⁹ See for example BEPE Update ‘Inclusive Design – a lasting Olympic and Paralympic Legacy’ April 2014.

⁵⁰ K Gilbert and O Schantz, *The Paralympic Games: Empowerment or Side Show?* (Meyer & Meyer Verlag 2008)

⁵¹ *Ibid.* 27.

⁵² D Reeve ‘Psycho-emotional disableism and internalised oppression’, (2014) in J. Swain, S. French, C. Barnes and C. Thomas (eds) *Disabling Barriers - Enabling Environments*, 3rd Edition, London: Sage, 92-98.

Moreover, the genesis of the Paralympics within a hospital setting, focused on assimilation into society,⁵³ does not sit comfortably with social model thinking and fails to consider the differences between congenital and acquired impairment.

A 2016 House of Commons response⁵⁴ to a House of Lords report on EQA highlighted the importance of engaging people in conversations and debates about disability rights and the need for equality rather than simply utilising legislation as a blunt instrument in an attempt to change attitudes. This highlights the importance of education and dialogue rather than didacticism to produce change. This could be achieved through the inclusion of disability discourse within the undergraduate liberal legal curriculum. However, the phrase ‘hearts and minds’⁵⁵ is reminiscent of charity appeal language and raises issues regarding virtue ethics that peoples’ hearts and minds are automatically involved in behaviour choices and that they all want to have them changed.⁵⁶

Education as a form of participation and a means to advance, promote and protect the human rights of people with disabilities

Prior to 1970, it was possible for people with disabilities to be labelled as ‘ineducable’, dependent upon the level, type and severity of their impairment under the Mental Health Act 1959 Section 57 or Section 57 of the Education Act 1944. Prior to the 1970 Education (Handicapped Children) Act, the education of people with disabilities was the province of local health authorities. The Act transfers the management of the education of children with disabilities under hospital or sheltered education services to the education authorities.⁵⁷ This view of disability and education originates from the

⁵³ British Paralympic Association, 'History in detail' <<http://paralympics.org.uk/games/ludwig-guttmann>> accessed 24 January 2017.

⁵⁴ House of commons, 'Government Response to the House of Lords Select Committee Report on The Equality Act 2010: The impact on disabled people' [2016] Cm 9283 2

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ Education (Handicapped- Children) Act 1970 cl 2 (a,b,c).

medical model of disability. This is a direct affront to dignity in the context of the transformative value of education outlined by the International Covenant on Economic, Social and Cultural Rights, ICESCR⁵⁸ in the UN Human Rights framework as something which could develop the human personality and sense of dignity and inculcate respect for fundamental rights and freedoms. Arguably, the legislature was implying that people with disabilities had no sense of rights or existence outside of their embodiment. The UK signed the ICESCR in 1968 and ratified it in 1976.⁵⁹ Consequently, the United Kingdom was agreeing ‘to refrain, in good faith, from acts that defeat the object and the purpose of the treaty.’⁶⁰ Permitting such violation prior to the amendments brought about by the 1970 act was in contravention of this commitment. Moreover, the 1944 Education Act makes a provision that neither impairment nor disability will be the only factor relevant in deciding whether a person has a disability, making them ‘incapable of receiving education in a school.’⁶¹ Rather, this was linked to the appropriateness of a child being educated ‘in association’⁶² with other children depending on either their best interests or those of other children. The language in this section of the Act is heavily medicalised discussing a child being submitted for medical examination to assess their level of disability and that any evidence presented by the medical examiner should be done so with the support of teachers.⁶³ This indicates the superiority of the medical perspective over the rights and abilities of people with disabilities at this time because the natural assumption would be that teachers would be more able to assess a child’s ability to succeed in education than a medical practitioner. This would mean that even if a medical perspective were thought to be necessary to illustrate a child’s physical capability to participate in education, it would seem logical that this would be supplementary to the role of the

⁵⁸ ICESCR Article 13

⁵⁹ UN ‘Status of Ratification Interactive Dashboard’ <<http://indicators.ohchr.org/>> accessed 20th January 2017

⁶⁰ UN, ‘What is the difference between signing, ratification and accession of UN treaties?’ <<http://ask.un.org/faq/14594>> accessed 20 January 2017.

⁶¹ Education Act 1944

⁶² *Ibid.* cl 57 (3)

⁶³ *Ibid.*

educator rather than the lead role as defined in the act.⁶⁴ The language describes disability as a communicable disease or stain on the character of the child or the family. 'In association with'. This is reminiscent of both classical and religious conceptions of disability.⁶⁵ Moreover, references to the notion of 'expediency'⁶⁶ presents issues in terms of the possibility of using education as a tool to advance the human rights of people with disabilities. If decisions are to be predicated on morality or the lack of it then this would be hard to achieve. This is evident in modern legislation and policy where the recognition and achievement of the human rights of people with disabilities is framed in the language of social justice, fairness and morality. The 1944 Act provides for university education⁶⁷, but without mention of people with disabilities being able to attend university, regardless of their disability. This demonstrates that in 1944 there was not a consideration that people with disabilities would have either the desire or the ability to attend universities.

In 1978 the Warnock Report began to signal a change in attitude that children with disabilities could attend mainstream schools, if their parents desired,⁶⁸ although the option of attendance at special school remained possible.⁶⁹ The report explored transition from school to adult life⁷⁰ focusing on achieving adequate support for children with disabilities such as presentation of the curriculum⁷¹ and the role of teacher, education and training.⁷² The report takes a liberal view of education, that it can '[...] enlarge a child's knowledge, experience and imaginative understanding, and thus his awareness of moral values and capacity for enjoyment [...]'⁷³ '[...] to enable

⁶⁴ *Ibid.*

⁶⁵ See Quarmby on Literature Review

⁶⁶ OED 2010

⁶⁷ *Ibid.* cl 84.

⁶⁸ Special Educational Needs Report of the Committee of Enquiry into the Education of Handicapped Children and Young People (Warnock Report) 1978 Ch. 7.

⁶⁹ *Ibid.* Ch. 8.

⁷⁰ *Ibid.* Ch. 10.

⁷¹ *Ibid.* Ch. 11.

⁷² *Ibid.* Ch. 12.

⁷³ *Ibid.* Ch. 1 (1.4).

him to enter the world after formal education is over as an active participant in society and a responsible contributor to it, capable of achieving as much independence as possible.⁷⁴ The report recognises the humanity and consequently dignity of children with disabilities regardless of the level of their disability and their right to seek and be granted knowledge through education and that their specific individual needs must be met.⁷⁵ However, this recognition is couched in language of goodness, morality, normality⁷⁶ and charity rather than strong affirmative restatement of rights. The Warnock Report indicates an important distinction that though medical and educational professionals may be more heavily involved with educational provision than standard education these professionals should not regard themselves merely as ‘tending and caring for’ children as ‘a matter of charity, but educating them, as a matter of right and to developing their potential to the full.’⁷⁷ Whilst it is possible to criticise the report for the use of paternalistic and medicalised language in part, this recognition however tentative of rights of people with disabilities and the linking of the achievement of those rights with the process of education is a significant step forward both in viewpoint and in action from the position of previous Acts.

The Warnock report represents a major step forward in relation to access to higher education for people with disabilities although the focus was mainly on people with physical disabilities where changes to the built environment rather than the educational and presentation of information were made to assist access.⁷⁸ It recommends that all universities and other establishments of higher education ‘should formulate and publicise a policy on the admission of students with disabilities or significant difficulties and should make systematic arrangements to meet the welfare and special

⁷⁴ *Ibid.*

⁷⁵ *Ibid.* Ch. 1 (1.7).

⁷⁶ *Ibid.* Ch. 1 (1.8).

⁷⁷ *Ibid.* Ch. 1 1.11.

⁷⁸ *Ibid.* Ch 10.47- 10.49.

needs, including careers counselling, of all those being admitted.⁷⁹ It states that certain universities have developed a particular bias towards certain disabilities:

‘...such as facilities for deaf and physically handicapped students at the University of Sussex, these should be strengthened; and similar centres should be established for other disabilities. On the other hand, we do not wish to see prospective students deprived of any choice of institution because of their disability. While this may be difficult to avoid for students who suffer from a relatively rare or particularly complex disability, we wish to see as many institutions as possible equipped to deal with students who are less severely handicapped.’⁸⁰

Whilst there is evidence here of medicalised language and outdated terminology, and a creation of a hierarchy of disability, this section should still be recognised as a significant step forward in terms of the rights and recognition of dignity and ability of people with disabilities to receive an education. This section recognises the importance of the involvement of people with disabilities in assisting each other with securing access to education and other rights by referencing the role of the then National Bureau for Handicapped Students in raising awareness and encouraging all institutions throughout the UK to develop facilities for students with disabilities.⁸¹ Moreover, the report makes specific reference to the ‘hope that it will receive adequate financial support to continue its valuable work.’⁸² The report recognises the need for students with disabilities to receive supplementary and discretionary financial support from the government to enable them to access and fund their courses on an equal basis with others and highlighted that students with disabilities faced particular difficulties in

⁷⁹ *Ibid.* Ch 10.49.

⁸⁰ *Ibid.*

⁸¹ *Ibid.* Ch. 10.50.

⁸² *Ibid.*

obtaining adequate financial assistance particularly on courses that had not traditionally attracted it.⁸³ However, the discretion to provide this assistance remained with local authorities and the report recognised that there would be difficulties in achieving this and made arguments that it should be seen as a means of decreasing dependence of people with disabilities on welfare support in the future.⁸⁴ Paragraph 10.128 (2) and 10.130 discuss the value of people with disabilities coming together to assist other people with disabilities and to increase social awareness of disability. Read in its purest context, this could potentially be seen as patronising and stigmatising, reducing the aspirations of people with disabilities after education. However, when read in context of the overall aims of the document, these sections of the report support the argument proposed in the present research that an understanding of the position of people with disabilities in society through specific means of education through law or in the case of the report other channels, could assist in the empowerment and advancement of the rights of people with disabilities and consequently other marginalised groups within society. However, there are several issues. The authors define a handicap in the educational context as:

‘Besides his academic studies he must learn, for example, to accommodate himself to other people. He must [...] learn what will be expected of him as an adult. Any child whose disabilities or difficulties prevent him from learning these things may be regarded as educationally handicapped [...]’.⁸⁵

This is an example of equating disability with failure to assimilate to social mores transforming disability back into stigma.

⁸³ *Ibid.* Ch. 10.103-1.107.

⁸⁴ *Ibid.* Ch. 10.106.

⁸⁵ *Ibid.* Ch. 3.2.

The Warnock Report comments on the potentially negative effects of the categorisation of children with disabilities and diverse learning needs and makes the argument that former categorisations should be replaced with more inclusive language.⁸⁶ However, the report makes the argument that forms of description will be needed for convenience when providing specialist education.⁸⁷ This appears to be a superficial comment because categorisation is still categorisation and continues to place the impairment before the child. Focus on '[...] the convenience' of others is problematic. Additionally, there was no proposed change for references to children with physical and sensory disabilities, only, to stop using terms such as educationally or mentally subnormal or maladjusted in favour of mild, moderate and severe learning difficulties or behavioural, emotional and social disorders.⁸⁸ Warnock's 2005 pamphlet, highlights attempts by the 1978 Committee to remove clear categorisations of needs from the education legislation concerning people with disabilities resulted in cumbersome language which failed to understand differences of needs for children with disabilities and led to what she considered to be 'inadequate' support.⁸⁹ Baroness Warnock expressed concern that, rather than removing stigmatisation, this categorisation led to children being treated heterogeneously.⁹⁰ Baroness Warnock critiques the effectiveness of statementing and questions whether or not the move in perspective to keep children with disabilities out of specialist education is creating difficulties for those children who may be left in what she views as unsuitable environments with inadequate support.⁹¹ In response, she argues that the concept of inclusion should be reconsidered arguing that schools should not be seen as microcosms of society as they are for adults not children and children still need help in their development:

⁸⁶ *Ibid.* Ch. 3.21-3.25

⁸⁷ *Ibid.* Ch. 3.26

⁸⁸ *Ibid.* Ch. 3.26-3.28

⁸⁹ M Warnock, *Special Educational Needs: A New Look*. in L Terzi (ed), *Special Educational Needs: A New Look* 2nd ed (Bloomsbury Academic 2013) 18-19

⁹⁰ *Ibid.*

⁹¹ *Ibid.* 24-32

‘Education is a unique enterprise in that it is necessarily a temporary phase of life, directed towards the future, towards life after school. The pursuit of equality at school may mean taking whatever steps are necessary now to ensure equal opportunities later on. It should not be thought to entail an insistence that all children within a given area should be literally in the same school. What is needed is that all children should be included within a common educational project, not that they should all be included under one roof.’⁹²

The problem with this reimagining is that however noble Warnock’s motives may be as demonstrated by her insistence on a new definition of inclusion based on a 2003 paper⁹³ which focuses on the importance of environment over and above the goal of inclusion in maximising learning potential, is that whilst she herself in the same document has noted that there is a certain amount of stigma around the subject of children attending special schools⁹⁴ it is not possible to argue that this will be a temporary phase of life as the stigma may well continue past the point of elementary education. Moreover, there is potential that this would prevent those who have attended special school from moving back into mainstream setting as young adults and may even prevent them from having the qualifications necessary to do so. Moreover, Warnock’s attempts to argue that schools are not a microcosm for society is unconvincing as she gives no alternative to their relationship to society. If children are ‘shown’ a segregated society then it is likely that this will continue. Even if this were not the case, there is a risk that students with disabilities at all stages may be treated as curiosities and as such fail to have their rights recognised and respected.

⁹² *Ibid.* 33

⁹³ National Association of Head Teachers, ‘Policy Paper on Special Schools’ (July 2003) quoted in M Warnock, *Special Educational Needs: A New Look*. in L Terzi (ed), *Special Educational Needs: A New Look* 2nd ed (Bloomsbury Academic 2013) 34

⁹⁴ Warnock n. 89. 29

Norwich highlights a number of weaknesses with Warnock's response such as the perpetuation of negative labelling through the category Special Educational Needs⁹⁵ which he argues is poorly defined and vague leading to the potential for a postcode lottery of support.⁹⁶ He highlights that the location of a specific category of Special Educational Needs in education leads to a separatist industry fuelled by the professional interests of practitioners.⁹⁷ This research makes similar criticisms of the notion of specific fields of Disability Studies. Norwich highlights inconsistency within the common assessment framework for deciding whether a child has special educational needs. He highlights that the definition of special educational needs and learning difficulties does not match or link to definitions within disability legislation.⁹⁸

Terzi argues that whilst Warnock and Norwich make compelling arguments, she believes that the best way to consider inclusive education is in terms of the opportunities it gives. This would constitute a step forward.⁹⁹ However, she argues that each of the claims within the approach would require separate analysis and exploration.¹⁰⁰ However, her application of the capability approach to this area focuses around the work of Sen and Nussbaum.¹⁰¹ According to Sen, wellbeing should be assessed in terms of capabilities or rather the real opportunities they have to pursue valuable forms of living or to achieve valuable functioning. She reads Sen as to argue that being part of education presents an opportunity and an example of such functioning. She argues that there is a conceptual gain in considering arguments relating to inclusive education in terms of capability which goes beyond individual or social causal explanations and incorporates a sense of human diversity.¹⁰² Moreover,

⁹⁵ B Norwich, A Response to 'Special Educational Needs: A New Look' in B Norwich, L Terzi and M Warnock, *Special Educational Needs: A New Look* 2nd ed (Bloomsbury Academic 2010) 85

⁹⁶ *Ibid.* 85-86

⁹⁷ *Ibid.* 86-88

⁹⁸ *Ibid.* 88-89

⁹⁹ L Terzi, Afterword: Difference, equality and the ideal of inclusion in education in B Norwich, L Terzi and M Warnock, *Special Educational Needs: A New Look* 2nd ed (Bloomsbury Academic 2013) 163

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

¹⁰² *Ibid.* 150

she argues that capabilities lack of specific categories avoids devaluing individuals particularly those who have already experienced discrimination. She argues that the capabilities approach looks at the result of the interaction between personal circumstances and environment and means that equal value can be given to both typical and atypical types of functioning.¹⁰³ She argues that there is strength in the capabilities approach because it attributes agency to individuals as fundamental in leading good lives.¹⁰⁴ This is important in overcoming passivity and patronising images traditionally associated with special education needs as identified by Norwich. Lastly, Terzi argues that the interrelated elements of the capability framework and the importance of equality and wellbeing can transform the current system ‘placing the wellbeing of students with disabilities and special educational needs at the centre of the educational process whilst considering the expansion of their capabilities for functioning and their agency suggests a shift from narrowly defined educational outcomes [...] to broader aims including social, relational and participatory elements.’¹⁰⁵ It is a central argument to the current thesis that linking the concept of virtue ethics relating to goodness and what is valuable is dangerous both in terms of conceptualising disability and the law and legal education because ethical lenses are dependent on the person examining the issue and any attempts to inculcate such a viewpoint could lead to the problems of indoctrination as highlighted by several authors such in the preceding chapters.¹⁰⁶

Barton was critical of Warnock’s 2005 review of the original report arguing that it is ‘a reflection of naivety, arrogance and ignorance on the part of the author.’¹⁰⁷ The failure of the report to make serious and considered reference to those who advocate for

¹⁰³ *Ibid.* 150-151

¹⁰⁴ *Ibid.* 151

¹⁰⁵ *Ibid.*

¹⁰⁶ See Theoretical Framework Chapter. Freire Discussion

¹⁰⁷ L Barton, ‘Special Educational Needs: an alternative look. (A Response to Warnock M. 2005: Special | Educational Needs - A New Look)’ Institute of Education, University of London. 1

inclusive education for people with disabilities and the role of people with disabilities in this advocacy. Barton argues that this raises the question of whose voice is seen as significant and on what grounds, along with the suggestion that those advocating for inclusive education have gone too far but that their hearts are in the right place, which Barton argues is trivial and patronising.¹⁰⁸ He allows, however, that there are reasons for a lack of engagement. Firstly, that Warnock did not feel that this was important, to capture media interest. Though he suggests that there is a lack of awareness of changes in the field in the period between the reports or more seriously, a disregard of the literature.¹⁰⁹ He argues that her bolder statements have little or no support behind them and that her focus on whether or not inclusion is good for individual schools rather than society.¹¹⁰ He criticises the use of language such as ‘fragile children, suffering from learning disabilities and autistic spectrum disorder’¹¹¹ and the presentation of inclusion as something which only relates to people with disabilities.¹¹² He makes a compelling argument that resources should be donated to assisting schools in becoming more inclusive of all learners through multi-agency engagement.¹¹³

Whilst Barton addresses many of the weaknesses of Warnock’s restatement and emphasises the involvement of people with disabilities in influencing the delivery of inclusive education. There is weakness, in that he fails to consider any potential value of specialist educational provision as an empowered choice. Nor, does he give any real indication of how he would modify the mainstream system to ensure that the needs of all students were met in practice. By ignoring the perspective of the individual and focusing chiefly on the perspective of activists and DPLOs, it is arguable that he falls into a similar trap to Warnock in that he fails to appreciate that certain people in the

¹⁰⁸ *Ibid.* 2

¹⁰⁹ *Ibid.* 3

¹¹⁰ *Ibid.* 4

¹¹¹ *Ibid.* 5

¹¹² *Ibid.*

¹¹³ *Ibid.* 5-7

dialogue around inclusive education will be more privileged than others. It is important that whilst collective voices provide a base for the inclusion of perspectives on the relationship between the law and the rights of people with disabilities and their possible advancement, that individual voices and perspectives are heard, to prevent inequalities simply from being perpetuated from different viewpoints.

Despite the weaknesses in the original Warnock report and the response, its recognition of the ability of people with disabilities to participate in higher education and the linking of participation in education to dignity is and was a significant step forward in the rights of people with disabilities. It offers an important insight into the strengths and weaknesses of the legal framework at the domestic level in protecting and advancing the rights of people with disabilities, which should be discussed with students so that they can consider the potential labelling as either liberating or limiting legislative action.

The DDA 1995 required Amendments to the Higher Education Act 1992, to ensure that higher education institutions considered elements of accessibility and made records of these available to the public.¹¹⁴ The Dearing Committee recommended several proposals concerning access of people with disabilities to higher education in 1997 including the provision of funding to institutions which showed a commitment to widening participation.¹¹⁵ These highlighted the importance of DSA in meeting the costs for students with disabilities but highlighted that there will be additional costs to institutions.¹¹⁶ However, in spite of this, the report argued that higher education

¹¹⁴ C Gooding, Blackstone's Guide to the Disability Discrimination Act 1995 (Blackstone Press Limited 1996) 48.

¹¹⁵ The National Committee of Inquiry into Higher Education, 'The Dearing Report (1997) Higher Education in the learning society' <<http://www.educationengland.org.uk/documents/dearing1997/dearing1997.html#07>> accessed 30 January 2017

¹¹⁶ *Ibid.* Section 7. 42

institutions should seek to honour the provisions of the DDA.¹¹⁷ It focused on the role of the Institute for Learning and Teaching in meeting the needs of students with disabilities.¹¹⁸ However, there was no expectation that any of the suggestions would be implemented as a matter of course. The Disability Equality Scheme (DES) was designed to provide a way for people with disabilities to become involved with policies in relation to access and participation as a means of influencing change.¹¹⁹ Beauchamp-Pryor¹²⁰ discusses the experiences of a group of students with disabilities in a Welsh university in 2003. It focuses on their experiences of engaging with disability services as part of a DES scheme to make their opinions about policy decisions known. Beauchamp-Pryor argues that the effectiveness of those schemes depends on the attitudes of those in positions of authority to ensure genuine involvement of people with disabilities. She highlighted a number of risk factors in preventing this which included Disparities of power,¹²¹ dominant discourses¹²² and validity of the involvement of students in terms of influencing and changing practices at an institutional level,¹²³ timing of consultations to ensure that students could actually take part without jeopardising their studies alongside their peers,¹²⁴ issues of disability identity and stigma and recognition and encouragement of those with 'invisible' disabilities.¹²⁵ The inculcation of the ideas of Proactive Critical Citizenship through the curriculum has the potential to redistribute some of the power between institutions and students. This may help them to express their ideas through more formalised avenues such as the Public Sector Equality Duty under EQA, which replaced the DES

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.* Section 7. 43

¹¹⁹ Directgov, 'Public sector organisations and "Disability rights Schemes"' (*The National Archive*, 10 April 2011)
<http://webarchive.nationalarchives.gov.uk/+http://www.direct.gov.uk/en/DisabledPeople/RightsAndObligations/DisabilityRights/DG_10038105> accessed 14 March 2018

¹²⁰ K Beauchamp-Pryor, 'From absent to active voices: securing disability equality within higher education' [2012] 16(3) *International Journal of Inclusive Education* 289.

¹²¹ *Ibid.* 285-287.

¹²² *Ibid.* 290.

¹²³ *Ibid.* 291.

¹²⁴ *Ibid.* 291-292.

¹²⁵ *Ibid.* 292

thus making them more effective.¹²⁶ This argument could extend to other marginalised students to help their voices be heard and to increase the effectiveness and ownership of equality measures generally.

Another development concerning access to education for people with disabilities was the enactment of Special Educational Needs and Disabilities Act (SENDA).¹²⁷ It had several implications on higher education institutions. Davies¹²⁸ highlighted the protection for students at the admissions stage meaning that universities cannot treat a person with a disability less favourably than another student either by its decision to admit or not admit the student, the offer for admission or by not admitting the student.¹²⁹ SENDA ensured that higher education institutions and student services must make sure that no discrimination occurred in the provision of services to students with a disability.¹³⁰ Protection extended to study abroad schemes for students with disabilities and rendered a situation where if facilities for a student with a disability could not be provided, the university in the UK may have to sever links with that institution.¹³¹ Marginal protection was given concerning courses regulated by a professional body in that a higher education institution could identify necessary adaptations to the course and assessment practices but there would be no presumption of discrimination if the professional body refused to accept these adaptations.¹³² SENDA prohibited either the temporary or permanent exclusion of students based on their disability status.¹³³ SENDA does not require higher education institutions to take

¹²⁶ EHRC, 'Public Sector Equality Duty' (*equalityhumanrights.com*, 20 Feb 2017) <<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty>> accessed 3 November 2017.

¹²⁷ SENDA was replaced by the Child and Family Act 2014 but it will not be discussed in this research as it does not deal with university or higher education and the provisions relating to higher education in SENDA were incorporated into Ch. 2 of the EQA 2010.

¹²⁸ M Davies, 'The Special Educational Needs and Disability Act 2001—The implications for higher education' [2003] 15(1) *Education and The Law* 19-45.

¹²⁹ EQA 2010 Chapter 2 Section 91 (a)-(c).

¹³⁰ *Ibid.* EQA Section 7 (a)-(f)

¹³¹ Davies n. 128. 28.

¹³² *Ibid.* 29.

¹³³ EQA 2010 Chapter 2 Section 91(2)(e).

action if they could not reasonably have known or be expected to know that a person had a disability.¹³⁴ This threshold of identification as a defence for failing to act in relation to disability still exists under the EQA 2010 Section 15 (2). This highlights the importance of developing student confidence in declaring a disability free from concerns about negative responses and treatment. SENDA could have negative implications for higher education because it would require greater focus and time to be spent on teaching rather than research and could be expensive¹³⁵ if compensation for breaches had to be paid and staff could lose freedom under increased monitoring.¹³⁶ Davies's assessment of the impact of SENDA appears to be overly negative and predicated on the inconvenience of rather than the potential for change to produce something positive both for the academy generally and its students. Rather than focusing on how the inclusion of people with disabilities may limit research time, emphasis should be placed on the potential for universities to become world leaders in research relating to disability. In the context of the present research, this supports the argument that the inclusion of critical proactive citizenship perspectives on disability within the liberal legal curriculum, which could be expanded into other areas in the future and to include other characteristics may assist current and newly emerging academics in familiarising themselves with their obligations under this legislation, and as such remove the extra burden of work that Davies identifies. Moreover, given the necessity for students to declare a disability to receive protection under the legislative framework, it is necessary for universities and those working in them to foster an environment and attitude where students feel comfortable to claim their disability status and the support they need rather than fearing negative responses or being aware of staff reluctance to carry out their duties.

¹³⁴ SENDA Section 28(3).

¹³⁵ *Ibid.*

¹³⁶ Davies n. 128.

Several policy documents contain references to the importance of education to social participation. The Fulfilling Potential: Making It Happen document highlighted the importance of secondary and tertiary and lifelong learning in making people with disabilities feel valued and supported as members of their community.¹³⁷ It focuses on the interplay between structural and attitudinal access to education. Including disability perspectives into liberal legal undergraduate education may help challenge and reform attitudes and lead to an increased level of access at the subject level. This model could be widened to encompass methods of including disability perspective into other subjects thus achieving similar aims at institutional and potentially country wide levels.¹³⁸ The document argues that universities must consider what adjustments can be made for people with disabilities.¹³⁹ It highlights the importance of a number of funding streams in ensuring that people with a wide range of disabilities can gain access to education at the higher level.¹⁴⁰ Fulfilling Potential - Next Steps highlights the importance of the participation of people with disabilities in education and achieving goals later in life, and the creation of inclusive local communities where people with disabilities can realise aspirations.¹⁴¹ The Office For Fair Access (OFFA) has a number of initiatives to ensure access to higher education by people with disabilities. One particular success it reports is the role of access agreements and subsequent monitoring. In 2015, 87% of targets relating to disabled students in universities with access agreements had been met or were on course to be achieved in the planned time.¹⁴² OFFA produces guidance on access agreements, which must include references to targets and review of current and future targets, and how this will help students reach their goals and become included in higher education and discussions of

¹³⁷ DWP, 'Fulfilling Potential: Making It Happen' July 2013 23, 'Fulfilling Potential - Strategy Progress Update' 2014 13 and 'Fulfilling Potential: The Discussions So Far' September 2012 makes link to life outside of education and adult transitions into the community.

¹³⁸ DWP, 'Fulfilling Potential: The Discussions So Far' September 2012 18.

¹³⁹ *Ibid.* 27.

¹⁴⁰ *Ibid.* 28-29.

¹⁴¹ DWP, 'Fulfilling Potential: Next Steps' September 2012 28 and 21.

¹⁴² Office For Fair Access (OFFA), 'Access agreement monitoring tells a national success story, says OFFA' <<https://www.offa.org.uk/press-releases/access-agreement-monitoring-tells-a-national-success-story-says-offa/>> accessed 30 January 2017.

the particular needs of minority groups including people with disabilities and how these will be met and funded.¹⁴³

Thematic issues

Status

Concerning status in both legislation and policy documents there appears to be disproportionate focus on primary and secondary education over and above tertiary education and in relation to tertiary education, physical and attitudinal barriers are focused on more than curriculum content. More attention seems to be given to the needs and rights of children with disabilities over and above adults in relation to educational matters.¹⁴⁴ A Working Paper from 2012 on the journey from education to work for people with disabilities¹⁴⁵ highlighted a difference in status in terms of access to higher education for example it found that of those surveyed in the twelve face-to-face in-depth interviews, all those with physical impairments aspired to higher education¹⁴⁶ and found that in some instances, even when people had not been able to complete a degree, having taken part in higher education was a significant confidence booster.¹⁴⁷ Another weakness is that the government continues to link participation in education and society more generally with the notion of becoming more economically productive and self-sufficient.¹⁴⁸ This creates an image of people with disabilities as being reliant upon the state to meet their needs which echoes outdated models of disability and older legislation such as the Poor Laws, rather than emphasising the participation that people with disabilities can bring to society. It is arguable that the

¹⁴³ OFFA, 'How to produce an access agreement for 2016-17' <https://www.offa.org.uk/wp-content/uploads/2015/02/How-to-produce-an-access-agreement-for-2016-17-PDF.pdf> accessed 30 January 2017.

¹⁴⁴ Alliance for Inclusive Education, *The Case for Inclusive Education The What, the Why and the How* and Alliance for Inclusive Education, *Advocacy and Training Toolkit*; Office for Disability Issues, *UK Initial Report on the UN Convention on the Rights of Persons with Disabilities* 2011 69-74

¹⁴⁵ A-M Hamer, *Working Paper No 111- Journey from education to work* (DWP 2012)

¹⁴⁶ *Ibid.* 7.

¹⁴⁷ *Ibid.* 8.

¹⁴⁸ DWP, 'Fulfilling Potential: Making It Happen - Strategy Progress Update' September 2014 13-14; DWP 'Fulfilling Potential: Making it Happen July 2013 4 and 23; DWP 'Fulfilling Potential: The Discussions So Far' September 2012 pp. 17-18; DWP, 'Fulfilling Potential: Next Steps' September 2012 18, 23 and 30.

continued focus of legal education at the undergraduate level on employment discrimination perpetuates a similar stereotype.¹⁴⁹ If the worth of people with disabilities is confined to their ability to partake in formalised employment without considering other factors both legislatively and socially which may prevent this in practice, it may be possible that the dignity and worth of people with disabilities, and those with impairments, will be ignored by both the government and society. By bringing these important concepts and conversations to the fore of student consciousness through the discussion of disability and liberal legal perspectives on it in the academy may go a small way to preventing this from happening and ensuring that proactive critical citizens are able to see beyond economic value and to retain respect for the dignity of all people. A 2016 Report by the House of Lords¹⁵⁰ examined the protection afforded by the Equality Act 2010 in relation to the rights of people with disabilities. It addressed several concerns particularly those by some that the integration of disability into a list of nine protected characteristics had led to a weakening of protection for the rights of people with disabilities because integration meant that focus had been removed from the particular challenges faced by people with disabilities which were not always common to those with other protected characteristics without disability.¹⁵¹ Regarding education, the Report focused on educational attainment of children with disabilities but no mention was made of university, higher or tertiary education which supports the argument of this research

¹⁴⁹ Based on an examination of the public domain content of LLB programmes at 78 English Institutions in the 2018 Complete University Guide Law Table, as an independent guide, 22 institutions covered Disability or Discrimination within their Employment modules, 5 institutions offered specific or Anti-discrimination modules but disability content was not clear from websites, and 51 institutions gave no indication of coverage on their websites. (numbers correct as of 17:16 on 16/3/18). Leeds and Westminster Universities excluded from these numbers because they offer a publicised Disability Law Module. See University of Leeds School of Law, 'LLB Law' (*law.leeds.ac.uk*, 2017) <<http://www.law.leeds.ac.uk/undergraduates/llb-law/>> accessed 19 June 2017 and University of Westminster, 'Law School' (*Westminster.ac.uk*, 2017) <<https://www.westminster.ac.uk/about-us/our-people/directory/bunbury-stephen>> accessed 19 June 2017

¹⁵⁰ House of Lords, 'Select Committee on the Equality Act 2010 and Disability The Equality Act 2010: the impact on disabled people Report of Session 2015-16 HL Paper 117' (*www.parliament.uk*, 24 March 2016) <<https://www.publications.parliament.uk/pa/ld201516/ldselect/ldseqact/117/11702.htm>> accessed 27 February 2017

¹⁵¹ *Ibid.* Paras. 46 and 47

that the placement of disability both in the discourses of higher education and the needs of students with disabilities in practice has been and continues to be under considered.¹⁵²

Economics

The UK is currently reviewing how support for students with disabilities is provided via Disabled Students Allowance (DSA) a non-repayable, non-means tested grant provided to students to meet the additional costs that they incur as a direct result of the impact of their disability.¹⁵³ These have been available to students since 1990 and expenditure on DSAs has increased year on year along with increased rates of participation.¹⁵⁴ As a result, in 2012 changes were introduced to maintain sustainability. Consequently, Higher education institutions must ensure and fund access for students by making reasonable adjustments as per their EQA obligations rather than DSAs.¹⁵⁵ These areas include additional costs of accessible accommodation within the university, practical support assistant, library, reader, scribe, proof reader, study assistant, examination support worker, manual note takers and specialist transcription services.¹⁵⁶ Additionally, DSA will no longer fund the entirety of computer equipment as computers are no longer solely seen as specialist equipment needed by students with disabilities, as institutions have modified their courses to include Virtual Learning Environments and computer software.¹⁵⁷ It argued that it was not unreasonable to expect institutions to provide onsite computing facilities for students with

¹⁵² *Ibid.* Chapter 11

¹⁵³ G Clark, 'Higher education: student support - changes to Disabled Students' Allowances (DSA)' (*Department for Business, Innovation & Skills The Rt Hon Greg Clark MP*, 15 September 2014) <<https://www.gov.uk/government/speeches/higher-education-student-support-changes-to-disabled-students-allowances-dsa--2>> accessed 18 October 2016.

¹⁵⁴ D Willetts, 'Higher education: student support: changes to Disabled Students' Allowances (DSA)' (*Department for Business, Innovation & Skills and The Rt Hon David Willetts*, 7 April 2014) <<https://www.gov.uk/government/speeches/higher-education-student-support-changes-to-disabled-students-allowances-dsa>> accessed 18 October 2016.

¹⁵⁵ S Hobbie and P Bolton, 'House of Commons Library' [January 2016] Briefing Paper Number 7444 Reform of Disabled Students' Allowances in England 12.

¹⁵⁶ Department for Business Innovation and Skills 'Higher Education: Disabled Students' Allowances Consultation: Equality Analysis' December 2015. 3.

¹⁵⁷ Department for business innovation And Skills, 'Disabled Students' Allowances Consultation: Equality Analysis' [2015] Higher Education 9.

disabilities.¹⁵⁸ In consultation, arguments supported continued assistance to fund IT equipment because access to computer equipment and assistance through DSA assists student retention and completion rates of people with disabilities. Consequently, students with disabilities requiring a computer as part of their accessibility package would be asked to contribute £200 to the cost of their computer, as this was the average that students without disabilities were expected to pay towards a computer. However, a briefing by British Assistive Technology Association (BATA) indicated that £200 levy was adversely affecting students' uptake in DSA.¹⁵⁹

Reports by Business Innovation and Skills indicated many institutions cannot provide the level of funding required to ensure support remains at the same level, and that some students may be adversely affected.¹⁶⁰ However, the report failed to consider the impact of the proposed changes. Moreover, suggested efficiency measures such as students using unqualified postgraduate notetakers and assistive technology instead¹⁶¹ are problematic for a number of reasons. Firstly, it fails to respect the rights of students with disabilities to exercise their dignity and autonomy to choose how their support is delivered to maximise effectiveness. Students without disabilities are free to access and absorb information in the most appropriate way for them and would be able to change their practices if necessary, which creates disparity between students leading to substantive inequality. Secondly, it fails to understand the skill that is encompassed in professional support services and the rapport between students and support worker, which may not be possible with automated or non-formalised support provision from other students. Thirdly, removing employed support workers places students with disabilities at the mercy of other students' schedules or assistive technology which may

¹⁵⁸ *Ibid.* 14.

¹⁵⁹ BATA, 'The negative impact on disabled students of the introduction of a £200 levy on Disabled Student Allowances.' October 2016

¹⁶⁰ Department for business innovation And Skills n. 156. 12-13.

¹⁶¹ Department for business innovation, And Skills 'Government Response Consultation on targeting funding for disabled students in Higher Education from 2016/17 onwards' [2015] Higher Education 16.

malfunction or be inaccessible to them without help. Seale et al¹⁶² discovered that some students with disabilities do not have the appropriate cultural capital¹⁶³ from use of standard technology or school ICT qualifications to enable them to make sufficient use of assistive technology to enhance their studies.¹⁶⁴ They found that they were unlikely to ask for non-formalised help from non-disabled peers as they did not want to burden them or felt that they would not understand the difficulties they were experiencing, particularly if they were disability specific.

Consequently, the government is deciding the right of students with disabilities to function autonomously based on cost which is contrary to Kantian conceptions of dignity, which hinges on autonomy.¹⁶⁵ These measures place barriers on the participation of people with disabilities which ignores a key aspect of their personhood. Removing resources at such a key time in the development of participation of people with disabilities in education and in the job market, the government may prevent students with disabilities from gaining the best degree they are capable of and consequently making employment harder to access. Removing elements of funding and reducing the disability premium available through the Higher Education Council Funding places higher demands on higher education institutions to fund the needs of people with disabilities. This may have a negative effect on both the participation of people with disabilities in higher education and the respect for their human rights there because they may be increasingly seen as an economic burden on the university and diverting funds away from other activities or groups of students. This gives rise to

¹⁶² J Seale and others, 'Not the right kind of 'digital capital'? An examination of the complex relationship between disabled students, their technologies and higher education institutions' [2015] 82 *Computers and Education* 118-128.

¹⁶³ P Bourdieu and JC Passeron, *Reproduction in Education, Society and Culture* (2nd edn, Sage Publications 2000) 30

¹⁶⁴ See above n. 162.

¹⁶⁵ I Kant, *Groundwork for the Metaphysics of Morals*. in A.W. Wood (ed), *Groundwork for the Metaphysics of Morals* (Yale University Press 2002) 51

Zola¹⁶⁶ and Stone's¹⁶⁷ concerns about the minority approach in terms of financing people with disabilities by pitting the needs of one group against the needs of another one meaning that the least powerful group will lose out by default.

However, changes to copyright for people with disabilities have made it easier to access texts and books in alternative formats, although if a commercial copy in alternative format is available, students will have to pay,¹⁶⁸ which may lead to a higher cost than for other students without disabilities and institutions.¹⁶⁹ The EQA provides that steps must be taken to anticipate to avoid disadvantage and to provide an auxiliary aid where necessary.¹⁷⁰ These costs cannot be passed to people with disabilities. However, there are no definitions of what constitutes an auxiliary aid in the Act nor any indication of financial expectations in terms of its provision. The reasonable adjustment duty in the EQA requires that people with disabilities are provided with information in an accessible format which is particularly important in relation to access to education for people with disabilities. This is particularly important for students with and without disabilities to be aware of because it gives support to claims for assistance or adjustments made in the academic context and highlights the range and need for reasonable adjustments generally, as well as providing scope at the academic level to discuss the thresholds for the provision of support as a potential weakness in the framework and the knock-on effect this may have both in law and civil society.

¹⁶⁶ I Zola, 'Toward the Necessary Universalizing of a Disability Policy' [2005] 83(5) *The Milbank Quarterly* 19-20

¹⁶⁷ D Stone, *The Disabled State* (1st edn, Temple University Press 1986) 188-189

¹⁶⁸ Intellectual property office, 'Exceptions to copyright: Accessible formats for disabled people' [October 2014].

¹⁶⁹ A Mcnaught, 'DSA changes - short term purgatory for long term paradise?' (Chartered Institute of Library and Information Professionals, 01 February 2017) <<http://www.cilip.org.uk/blog/dsa-changes-short-term-purgatory-long-term-paradise>> accessed 2 February 2017.

¹⁷⁰ EQA 2010 Section 20

The 2016 House of Lords Report¹⁷¹ highlighted the potential difficulties of making cumulative assessments with regard to equality impact on people with disabilities in terms of expenditure because the Treasury felt that they did not have the scope to complete such assessments even though this was disputed by the Equality and Human Rights Commission, whilst the Minister for Disabled People commented that the Treasury's impact assessment is the most comprehensive that is available but that the current model used by the Treasury did not allow them to extrapolate findings relating solely to the effects of decisions on people with disabilities and that it was the Treasury's job to find a way to do this.¹⁷² Whilst this has always been important to ensure the rights of people with disabilities are not adversely affected by spending decisions to a greater extent than those without disabilities, the ability to ascertain this will become even more important in light of the Brexit decision because as any changes are made to domestic legislation in light of this decision will need to be considered in relation to people with disabilities. This will be discussed in more detail in the proceeding chapter. However, it is certain that in such a time of change people with disabilities and society generally will need to have a greater awareness of the potential impact of any such change on people with disabilities and that a possible way of achieving this is through the inculcation of a sense of Proactive Critical Citizenship which could be begun by incorporating disability discourse into the undergraduate liberal legal curriculum.

Reasonable Adjustment and Undue Burden

'Undue burden' does not appear in the UK framework. However, the concepts of reasonable adjustments and what this research argues are its inherent difficulties

¹⁷¹ House of Lords, 'Select Committee on the Equality Act 2010 and Disability The Equality Act 2010: the impact on disabled people Report of Session 2015-16 HL Paper 117' (www.parliament.uk, 24 March 2016)

<<https://www.publications.parliament.uk/pa/ld201516/ldselect/ldseqact/117/11702.htm>> accessed 27 February 2017

¹⁷² *Ibid.* Para. 369

remain. Despite the fact that the phraseology 'undue burden' is not used there are references to what adjustments may be deemed reasonable for service providers to make, therefore the notion of undue burden remains although unspoken.¹⁷³ Moreover, as a ratifying state of the CRPD, undue burden still remains in UK legislation by virtue of Article 2.¹⁷⁴ That it exists without label in the British contexts is potentially more dangerous and undermining to rights because people with disabilities may be subject to its negative effect without realising it, particularly, if they are not familiar with the legislation and concept. Even if the phrase 'undue burden' is not used, the existence of the parameters subtly collocates access with financial cost and difficulty rather than rights and productivity. Additionally, any adjustments must meet the threshold of eliminating substantial disadvantage which is defined as anything 'more than minor or trivial'.¹⁷⁵ This language is rooted in an able-bodied narrative surrounding accessibility because the implication that something must be more than minor or trivial suggests that people with disabilities may bring spurious claims. This fails to recognise the splash erosion effect of discrimination or failure to provide reasonable adjustments, when a person encounters seemingly minor or trivial difficulties in accessing facilities and services repeatedly over a prolonged period of time. Reeve¹⁷⁶ describes this as 'psychoemotional disablism'¹⁷⁷ which she argues is created by negative interactions with the material world and physical barriers.¹⁷⁸ She argues that this can occur when solutions to particular barriers can be too embarrassing, distressing or humiliating to use and she argues that cumulatively this can result into something akin to emotional

¹⁷³ Equality Challenge Unit, 'Managing reasonable adjustments in higher education' November 2010 2 and The Quality Assurance Agency for Higher Education, 'Code of practice for the assurance of academic quality and standards in higher education Section 3: Disabled students - February 2010' 2nd Edition, 2010 9.

¹⁷⁴ CRPD Article 2.

¹⁷⁵ Equality and human rights commission, 'Are disabled people at a disadvantage?' (www.equalityhumanrights.com, 21st July 2016) <<https://www.equalityhumanrights.com/en/multipage-guide/are-disabled-people-disadvantage>> accessed 20 February 2017

¹⁷⁶ D Reeve, Part of the problem or part of the solution? How far do 'reasonable adjustments' guarantee 'inclusive access for disabled customers?'. in Soldatic and others(eds), *Disability, Spaces and Places of Policy Exclusion* (Routledge 2014) 99-114

¹⁷⁷ *Ibid.* 103

¹⁷⁸ *Ibid.*

abuse which affects wellbeing and sense of self resulting in psychoemotional disablism.¹⁷⁹ She argues that this needs to be acknowledged by academic disciplines outside of Disability Studies and geographies of disability to make sure that these multiforms of disablism are identified and removed.¹⁸⁰ Reeve is critical of reasonable adjustments, arguing that it can form a large part of the creation of disablism because they are not always fit for purpose and can produce more barriers than they remove and can leave people feeling unconsidered through a tick-box approach, designed to achieve the bare minimum.¹⁸¹ Reeve highlights the importance of education about barriers for people with disabilities as a key element in creating positive institutional change rather than individual change.¹⁸² All of these factors highlighted by Reeve and their potential effects should be considered in both the content of legal education and its delivery to ensure that the academy models the working relationship between law and society rather than potentially perpetuating the same difficulties.

Lawson argued that Britain possesses one of the strongest and most successful reasonable adjustment regimes in the world but that it had been neglected by academic debate and analysis.¹⁸³ Lawson highlights arguments made that reasonable adjustment is a cornerstone and the most important aspect of non-discrimination law and that the concept of reasonable adjustment is an incisive weapon in breaking down barriers and ignorance which have had the effect of limiting the opportunities available for people with disabilities.¹⁸⁴ However, it is a primary argument of this research that whilst this may have been true in the earlier stages of the development of anti-discrimination law, the concepts of reasonable adjustment and the attendant thresholds have greater potential to limit change should it be left unchanged than to drive it forward. Lawson

¹⁷⁹ *Ibid.* 105-110

¹⁸⁰ *Ibid.* 104

¹⁸¹ *Ibid.* 106

¹⁸² *Ibid.* 108

¹⁸³ A Lawson, *Disability and Equality Law in Britain: The Role of Reasonable Adjustment* (Hart Publishing 2008) 4.

¹⁸⁴ *Ibid.* 6-7.

considers how the notion of reasonable adjustment has interacted with the social model to enable people with disabilities to utilise it to call upon policy makers and lawyers to create laws which break down the barriers between the individual and society and that reasonable adjustment and its inclusion within the law is an example of this.¹⁸⁵ She highlights that the social model has not been free from controversy and that several people have criticised it for failure to take account of the entirety of the experience of both disability and impairment together.¹⁸⁶ The present research does not dispute the potential utility of the expressive trigger of the notion of reasonable adjustment in requiring people to consider the needs of people with disabilities and nor does it argue that it has been subjected to little academic debate. The proposed research goes one step further in arguing that the concept could be reimagined and that this could be considered with students through the discussion of a variety of cases.

The 2016 Report¹⁸⁷ of the impact of EQA on Disabled people by the House of Lords highlighted that many of the respondents felt that the role of reasonable adjustments was often misunderstood by those required to implement it and seen as ‘perks’ and ‘special treatment’ or ‘favouritism’ rather than as a means of levelling the playing field to ensure access for people with disabilities on a substantively equal basis with others.¹⁸⁸ In terms of education, a disability advisor stated that she had experienced difficulty in making reasonable adjustments for students due to resistance on the grounds of difficulty or cost.¹⁸⁹ Arguments were made for more prescriptive guidance as to what is as reasonable adjustment. However, prescription is difficult to achieve because what may be reasonable and appropriate for one person would not be so for

¹⁸⁵ *Ibid.* 12

¹⁸⁶ *Ibid.* 11

¹⁸⁷ House of Lords n.171.

¹⁸⁸ *Ibid.* Para. 209

¹⁸⁹ *Ibid.* Para. 203

another. Therefore, a principles-based approach¹⁹⁰ was suggested.¹⁹¹ ‘Assurance of rightful Access’¹⁹² would go some way to achieving this because the word ‘assurance’ means ‘a positive declaration intended to give confidence; a promise; certainty.’¹⁹³ This is a statement of principle, that provides a sense of certainty lacking from the idea of reasonable adjustment because there is no objective threshold to meet. There is however case law threshold of *Cordell v Foreign and Commonwealth Office*¹⁹⁴ which presents a maximum threshold of what is unreasonable rather than the current state of affairs where people seem to focus on the minimum threshold of what is reasonable because the alterations are viewed by some as ‘special treatment’.¹⁹⁵

Lawson recognises that some people may find the compromise element of reasonable adjustment difficult to overcome.¹⁹⁶ She argues that removing the concept would simply move dissatisfaction onto undue burden and would achieve little.¹⁹⁷ She comments that reasonableness can be encouraging into making people without disabilities obliged to consider how disability barriers may be overcome.¹⁹⁸ She argues that these shortcomings could be conquered by the adoption of programmes outside of legislation, such as programmes of positive or affirmative action.¹⁹⁹ She responds to fears about uncertainty by arguing that without flexibility the needs of certain people with certain types of impairment would become invisible and that there are other

¹⁹⁰ “Principle-based regulation (PBR) can be contrasted with rules-based regulation (RBR) where the former relies upon broad and looser principles to guide action and the latter upon stricter pre- and proscriptive rules for framing approaches to governance and decision-making.” See G Laurie and N Sethi, ‘Towards Principles-Based Approaches to Governance of Health-related Research using Personal Data’ [2013] 4(1) Eur J Risk Regul 43–57

¹⁹¹ House of Lords n. 171 Para 216

¹⁹² Pearson A ‘A Comparative Study of ‘Reasonable Adjustment’ and ‘Undue Burden’ Provisions for People with Disabilities Accessing Public Transport Services under European Union Law.’ Keele University September 2014 Pearson A.V., ‘What's worth got to do with it? Language and the socio-legal advancement of disability rights and equality’ (2014) 20(3) Web JCLI. A.V Pearson, ‘The debate about wheelchair spaces on buses goes ‘round and round’: access to public transport for people with disabilities as a human right’. (Spring 2018) 69(1) NILQ

¹⁹³ OED 3rd ed OUP 2010.

¹⁹⁴ *Cordell v Foreign and Commonwealth Office* UKEAT/0016/11/SM

¹⁹⁵ *Ibid.*

¹⁹⁶ Lawson n. 183. 280.

¹⁹⁷ *Ibid.*

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ibid.* 180-181.

examples such as in the area of maternity where similar provisions exist but without uncertainty.²⁰⁰ In response to the inegalitarian nature of reasonable adjustment, she argues that it is necessary to take steps to guard against the possibility that decision makers might interject their own attitudes into decision-making and to give clear illustrated examples of how to enact principles to increase disability awareness.²⁰¹ Whilst it is positive that Lawson acknowledges these potential weaknesses, a number of her remedies are still highly reliant on the changes in attitude and behaviour of people without disabilities towards people with disabilities. This is very difficult to achieve without sufficient education or right to engagement to enable people to feel as if they are making their own decisions rather than having them placed on them from above. A further difficulty with Lawson's argument is that whilst she recognises that some of the economic analysis of the cost of reasonable adjustment is misplaced and based on neoclassical economics, one of her arguments that these concerns are unfounded rests on the availability of government subsidy schemes such as Access to Work.²⁰² This is problematic, Access to Work is not available during education, and funding and availability of DSAs and support is being systematically reduced.²⁰³

Regarding curriculum content, *Hamilton v. Jamaica*²⁰⁴ and *Price v. UK*²⁰⁵ could be integrated into core areas to discuss reasonable adjustments and the rights of people with disabilities. Both were decided by the European Court of Human Rights²⁰⁶ which is separate from the European Union as part of the Council of Europe²⁰⁷ of which the UK is a member and the role of the European Court of Human Rights will not be

²⁰⁰ *Ibid.* 282-283.

²⁰¹ *Ibid.* 285-286.

²⁰² *Ibid.* 251-256.

²⁰³ See Economics Section p. 203-207

²⁰⁴ *Hamilton v. Jamaica Communication* No. 616/1995 7 July 1997 CCPR/C/60/D/616/1995

²⁰⁵ *Price v UK* [2001] Application No. 33394/96 ECHR

²⁰⁶ Council of Europe, 'European Court of Human Rights' <http://www.coe.int/t/democracy/migration/bodies/echr_en.asp> accessed 3 February 2017.

²⁰⁷ Council of Europe, 'Our Member States' <<http://www.coe.int/en/web/about-us/our-member-states>> accessed 3 February 2017

affected by Brexit. In *Hamilton v. Jamaica*, the inability of a death row inmate to clean out his cell due to paralysis and a failure of the state to make reasonable adjustments to enable him to do so was a violation of Article 10 of the ICCPR.²⁰⁸ In *Price v. UK*²⁰⁹ the UK was found to have violated M. Price rights under Article 3 of the European Human Rights Act she became ill and suffered inhumane and degrading treatment when she was held in inaccessible prison conditions in she was unable to access a bed or sufficient warmth due to disability. She was initially denied the right to take her electric wheelchair with her to be able to move around because it was deemed a luxury item. This meant that she was unable to access the bathroom and other facilities. The recent cases of Doug Paulley²¹⁰ concerning the rights of wheelchair users to have priority access to wheelchair spaces on buses could be incorporated into elements of the curriculum such as torts against the person, including trespass and battery. Additionally, the Supreme Court judgement highlights the hesitancy around reasonable adjustment, because even though it was considered, power to remove passengers obstructing it were not granted. Discussing cases with students may help to fulfil obligations under the CRPD Article 8 and the EQA 2010 Public Sector Equality Duty which requires institutions to have due regard in the way in which it encourages positive relations and equality between people who share a particular characteristic and those who do not²¹¹ and enable them to critically evaluate the need for and potential for change.

Lawson offers an insight into how disability specific issues could be introduced in Land Law teaching.²¹² The Scottish cases *Middleweed v Murray*²¹³ and *Drury v*

²⁰⁸ *Hamilton v. Jamaica Communication* n.179

²⁰⁹ *Price v UK* n. 202

²¹⁰ *Paulley v FirstGroup Plc* [2013] Leeds County Court Case 2YL85558, 4, *FirstGroup PLC v Paulley* [2014] COA EWCA Civ 1573, *Paulley v. FirstGroup PLC* [2017] UKSC

²¹¹ Equality Act 2010 Part 11 Advancement of Equality, Chapter 1, Public Sector Equality Duty para. 149

²¹² A Lawson, Mind the Gap! Normality, Difference and the Danger of Disablement Through Law. in A Lawson and C Gooding (eds), *Disability Rights in Europe From Theory to Practice* (Hart Publishing 2005) 265-282

²¹³ *Middleweed v Murray* [1989] SLT 11

McGarvie,²¹⁴ concerning easements. *Middletweed* dealt with right of way to a river bank for people with disabilities who owned fishing rights who were unable to access the bank on foot but by vehicle. The difficulty arose because the implied easement meant that there was no expressed provision for vehicle transport and the question of the case was whether vehicle access was necessary for the owners of the fishing rights to have full beneficial use of them. The argument advanced by the anglers was that vehicle access was necessary for their beneficial use, but this was rejected on the basis that the implied easement related to the needs of a person of average strength and mobility and as such would not need vehicular rights which Lawson argues prevented them from accessing their rights.²¹⁵ In *Drury* the claimants were an elderly couple with disabilities who accessed their cottage by a track crossing farm land which they had right of way over. However, the owner of the farmland placed gates over the track which were heavy. The physical impairments of the occupants of the cottage meant that they were unable to open the gates rendering them virtually housebound.²¹⁶ Consequently, they argued that the gates constituted an obstruction which the owner of the land should remove to give them access. However, the claimants in *Drury* were allowed the option to make adjustments to the gates at their own expense.²¹⁷ Lawson argues that this decision raises the possibility that other cases may occur where actions may be taken which means that people with disabilities cannot access land due to physical barriers, but without an idea of how this can be resolved.²¹⁸ Lawson argues that there is a policy element in both the *Drury* and *Middletweed* decisions because the judges were keen to uphold existing property law of minimising burdens on land that is subject to easement and that this was achieved by adopting a narrow conception of the easement owner as an ordinary able-bodied adult.²¹⁹ She argues further that widening this definition to

²¹⁴ *Drury v McGarvie* [1993] SLT 987

²¹⁵ Lawson n. 212. 266-67

²¹⁶ *Ibid.* 267

²¹⁷ *Ibid.*

²¹⁸ *Ibid.*

²¹⁹ *Ibid.* 267-68

include the needs of people with impairments would have imposed heavier burdens on land owners subject to easements but that it would have assisted the inclusion and participation of people with disabilities, rather than disabling them further and she further cites that in future cases litigants with disabilities should consider making an argument under Article 8 of the European Convention for the protection of Human Rights.²²⁰ Though Lawson's arguments relate to Scottish case law this should not hinder similar considerations being brought in to the English undergraduate liberal legal syllabus in relation to Land Law because the issues in these cases highlight the importance of the construction of the terms of easement in deciding what will be permitted by those who grant easement over their land to those enjoying the rights to that easement. In terms of English case law, the case of *Donovan v Rana*²²¹ which considered the right of the occupiers of a dwelling house to engage workmen to install utilities into their home when the owner of the land used to access the property refused to all this. The courts decided that as the property had to be used as a dwelling house per terms of the sale by the owner of the easement there was an implication that this would necessitate access by tradesmen and workmen and consequently the right of easement was granted. There is English precedent for considering implied rights of easement for particular groups of people which could be used to incorporate disability into the Land Law curriculum generally outside of the specialised landlord and tenant area where disability could easily be covered as a protected characteristic under the activities covered by the EQA 2010. Consequently, this provides an opportunity to explore the issues highlighted by Lawson in the general undergraduate law curriculum²²² through the use of problem questions in both tutorials and exams, which would go some way to mainstreaming disability in the core elements of the curriculum and exploring liberal elements of legal education through the issues raised relating to disability and access to social participation.

²²⁰ *Ibid.* 268

²²¹ *Donovan v Rana* [2014] 1Pe CR 23 (CA)

²²² Lawson n. 212

‘Assurance of rightful access’²²³ helps to overcome this because it does not focus access in the realm of what is different which as identified by Martha Minow²²⁴ and discussed in more depth in Chapter 2 of this thesis, rightful access can and should be afforded to everyone. By framing it in this language it is arguable that those making decisions in relation to access may be more likely to consider what they themselves would expect and accept concerning access provisions because couching it in the language of rights rather than retroactive adjustment is inclusive of everybody. Moreover, it would be possible to maintain existing guidelines about decisions in relation to resources available to make adjustments but the change from threshold based language to principle based language may result in a goal based approach rather than a threshold based approach which may encourage service providers to look at expenditure differently. If, however, issues of ‘reasonableness’ were to occur then case law would serve the same role as currently. However, the report highlighted the difficulties facing people with disabilities when accessing judicial means of rectification of discrimination, reasons for this included: lack of training to bring disability rights claims to tribunals by lawyers, fees, lack of access to legal aid for face-to-face advice which presents potential barriers for people with certain types of impairment, the removal of the statutory questionnaire procedure, the loss of tribunals to make wider recommendations, the difficulties of bringing class action in British Courts, inability to bring claims based on dual discrimination.²²⁵ It is proposed in the current project that if discourse surrounding the law and disability were incorporated into undergraduate legal education, more people would have an understanding of the barriers facing

²²³ A Pearson ‘A Comparative Study of ‘Reasonable Adjustment’ and ‘Undue Burden’ Provisions for People with Disabilities Accessing Public Transport Services under European Union Law.’ Keele University September 2014 A.V Pearson, ‘What’s worth got to do with it? Language and the socio-legal advancement of disability rights and equality’ (2014) 20(3) Web JCLI. A.V Pearson, ‘The debate about wheelchair spaces on buses goes ‘round and round’: access to public transport for people with disabilities as a human right’. (Spring 2018) 69(1) NILQ

²²⁴ M Minow, *Making All the Difference: Inclusion, Exclusion, and American Law* (Cornell University Press 1990),

²²⁵ House of Lords n. 171. Chapter 9

people with disabilities and the role that the law can play in amending these. As many law students go into careers outside of the law, it may be argued that they may transfer such knowledge to discussions of adjustments and resource allocation and that change may occur as the result of a trickle-down effect and thus present the opportunity to remove some of the disadvantages identified in relation to reasonable adjustment and disability in the report. Similarly to Lawson, the report focused on the availability of Access to Work scheme for people in employment highlighting the 2015 cap demonstrating that external funding is decreasing in amounts and availability.²²⁶

The House of Commons response²²⁷ highlighted that changes were needed. However, it was quick to acknowledge that there was no expectation on employers to ‘establish the cost²²⁸ before the refusal of an adjustment. This is indicative of an attitude that people with disabilities would be expecting too much to ask companies to do this, even though the denial of an adjustment could have a detrimental effect on the person with a disability. Arguably, legislation supports convenience for businesses and service providers rather than assisting people with disabilities, demonstrating why the concepts are unworkable and stunt²²⁹ progress. It demonstrates the power relationships between people with disabilities and decision makers about what is reasonable. This highlights the inherent weaknesses with the notion of ‘reasonable adjustment’ and the spectre of ‘undue burden’ within the framework.

The Equality and Human Rights Commission responded to the request for additional Codes of Practice by stating that many specified codes of practice and learning opportunities had been produced with little improvement.²²⁹ This demonstrates that

²²⁶ *Ibid.* Para. 221

²²⁷ House of commons, 'Government Response to the House of Lords Select Committee Report on The Equality Act 2010: The impact on disabled people' [2016] Cm 9283 15

²²⁸ *Ibid.*

²²⁹ EHRC, 'Equality and Human Rights Commission's response to the report of the House of Lords Select Committee on the Equality Act 2010 and Disability: the impact on disabled people' (*parliament.uk*, 2016) <<https://www.parliament.uk/documents/lords-committees/equality-act/EHRC-reponse-to-Equality-Act-Report.pdf>> accessed 10 March 2017 4-5

just producing more documents is of limited use unless people actually interact with them or know where to find them. It challenges the ideas of reification explored in the theory chapter that the mere existence of laws or rules will lead to a particular result. The Equality Commission stated that they would work together with Disabled Peoples Organisations to increase the accessibility and awareness of Codes of Practice and other documents.²³⁰ However, a weakness of this is that reliance on DPOs as a means of transmitting information assumes that they speak directly and for all people with disabilities which is not always the case and means that some perspectives will always be missing. The language in the report is heavily medicalised and patronising for a document associated with human rights and disabilities. For example, it refers to 'experts, practitioners, disabled peoples' organisations'²³¹ rather than talking about people with disabilities as experts in their own lives. This is emphasised by the Commission's reluctance to consider the reestablishment of the Disability Committee which would have provided a way of ensuring direct involvement with people with disabilities on an individual level. The Commission supported the reintroduction of the helpline²³² for people experiencing discrimination which would enable direct contact, but this is more likely to focus on remedying discrimination rather than empowering people with disabilities to prevent it from happening in the first place.

The Limits of the Legislative Process

The ratification of the CRPD by the UK government took place with little consultation with people with disabilities and their representative organisations. The House of Lords Committee Report highlighted that there had been insufficient discussions with people with disabilities or their representative organisations.²³³ The government response to this was that there had been sufficient conversation with organisations and

²³⁰ *Ibid.* 5

²³¹ *Ibid.* 2

²³² *Ibid.* 2-4

²³³ House of Lords House of Commons Joint Committee on Human Rights, 'The UN Convention on the Rights of Persons with Disabilities ' [2008] First Report of Session 2008-09 13.

people with disabilities, citing that they had received advice from the European Human Rights Commission and Equality 2025, an advisory group set up in the UK.²³⁴ The same document highlighted concerns from the UN Convention Campaign Coalition that Equality 2025 was not a representative organisation and that they had difficulties in calling meetings to be able to provide any information regarding the ratification of the CRPD.²³⁵ In an independent review of Equality 2025, it was proposed that it should be replaced by either strategic partnerships which would allow disability sector workers and DPULOs (Disabled People's User-Led Organisations) and VSOs (Voluntary Sector Organisations) to work with the Office for Disability Issues (ODI) to formalise relationships between people with disabilities and the government. Transparency would be assured by inviting DPULO and VSO members to apply to provide advice on early policy development. To prevent reliance on ODI funding, funding would be restricted to 25% of the partner organisations total annual income with effective monitoring measures to ensure value for money, agreed outcomes and the fitness for purpose of the advice. It was argued that this model would be cost effective and efficient in terms of resources.²³⁶ The second option was an ad hoc expert advisory group consisting of representatives from the disability sector and academics to provide expert and strategic advice to the government. This group could be fluid in membership with members only brought together when their set of expertise was deemed to be appropriate. It was argued that this could improve the depth and quality of advice and enhance credibility and it was stated that individuals could form part of this group. Arguments were made that any such group should be made up of a proportion of 75% being disabled people. Another argument was the flexibility of this model would provide value for money with a lead member on a permanent contract and others engaged on a call-off contract basis and admin support.²³⁷ Another option

²³⁴ House of Commons n. 227. 12.

²³⁵ *Ibid.* para. 28.

²³⁶ R Watts , 'An independent review of Equality 2025' [2013] (Advisory Non Departmental Public Body) For the Department for Work and Pensions 12.

²³⁷ *Ibid.* 13-14.

was to move the functions of Equality 2025 in-house but it was found that the department did not have the necessary expertise which could leave the department open to legal challenge.²³⁸ Direct engagement with people with disabilities was problematic due to confidentiality issues and the potential for government embarrassment.²³⁹ Delivery by the private sector was rejected on profit-making and cost efficiency grounds. Merger with another organisation was deemed not to be viable as there was no suitable organisation with the relevant remit to perform the necessary tasks.²⁴⁰

It could be argued that these issues demonstrate a failure to consider what is needed to facilitate engagement with and by people with disabilities in the processes of rights development and rights enforcement, both in terms of government processes and practices but also awareness amongst people with disabilities of the opportunity to voice their opinions and concerns, which are not sufficiently advertised to them. If this relationship were stronger then people with disabilities and the government would have a greater understanding of the issues within the current system and would be able to relate to each other. This would mean that those who would not be traditionally thought of as experts in the field, had opportunities to be involved in consultations. Rather than thinking of direct engagement as face-to-face it may be possible for governments to consider a system where people could write to the government with observations, concerns and ideas relating to disability on an individual level. These could be considered in meetings as to what action, if any, could be taken to resolve them. A similar process exists within the Mass Observation Archive.²⁴¹ This could be circulated both through established channels such as university and Disabled Peoples Organisations, Schools and Health Services to remove a sense of the political nature

²³⁸ *Ibid.* 14.

²³⁹ *Ibid.*

²⁴⁰ *Ibid.* 15.

²⁴¹ University of Sussex, 'The Mass Observation Archive', <<http://www.massobs.org.uk/>> accessed 31 January 2017.

and affiliation which may make it seem more attractive to those who would not normally participate.

Conversely, ‘Fulfilling Potential: Making it Happen - Better Working with Disabled People: The Way Forward, The Government response to consultation findings’²⁴² recognised the importance of engaging with persons with disabilities to developing government strategy.²⁴³ The difference between the Fulfilling Potential forum and others such as Equality 2025,²⁴⁴ was that it was disability specific with members from a wide-range of Disability Organisations and regional DPULOs, and concerned strategy across the whole government.²⁴⁵ Providing a community based route into government via organisations, offered the opportunity for people with disabilities who were not currently members of Disability Organisations to engage.²⁴⁶ People could communicate with experts through a number of channels such as telephone, writing or face-to-face meetings during consultation and implementation.²⁴⁷ This helped to fulfil the requirement under the CRPD for the UK government to liaise with people with disabilities.²⁴⁸ The Fulfilling Potential panel would have 30-40 members to present a large enough cross section of the opinions of people with disabilities, focusing on user-lead groups and lived experiences.²⁴⁹ To achieve this wider participation, people with disabilities and civil society need to have a greater sense of confidence and ownership in talking about disability rights. This will enable people who may not identify as activists and wish to be involved in DPULOs or other formal organisations, see disability rights as something proactive. It is arguable that increased discussion and critique of the law relating to disability at the legal education stage will assist in this.

²⁴² DWP, ‘Fulfilling Potential: Making it Happen - Better Working with Disabled People: The Way Forward, The Government response to consultation findings’ 18th January 2014.

²⁴³ *Ibid.* 4.

²⁴⁴ Watts n. 236

²⁴⁵ *Ibid.* 5.

²⁴⁶ *Ibid.* 6.

²⁴⁷ *Ibid.*

²⁴⁸ *Ibid.* 12.

²⁴⁹ *Ibid.* 14.

The 2017 CRPD Committee Report highlighted concerns about the “The lack of sufficient mechanisms to ensure the effective participation of all organizations of people with disabilities in decision-making processes concerning policies and legislation in all areas of the Convention, such as the strategy entitled “Fulfilling Potential: making it happen”.”²⁵⁰

Limits of Legislation to produce change

The ratification process of the CRPD and subsequent monitoring by the Committee on the rights of persons with disabilities demonstrates that there is a limit to the extent that legislation on its own can effectively produce social change. For example, the UK government ratified the convention with a number of reservations regarding education. These included the ability to enable parents and in some cases the government to elect for a child to attend special school rather than mainstream when it was felt that this would best meet their needs.²⁵¹ However, this has the potential to continue the duality of provision which has been criticised by theorists such as Oliver.²⁵² Hepple²⁵³ highlighted weaknesses in the requirement of the Public Sector Equality Duty under the EQA.²⁵⁴ He argues that the wording of the duty has created a tick-list approach focusing on procedure rather than outcome. Authorities are only required to show that institutions have considered elements of equality rather than achieving results.²⁵⁵ Consequently, Hepple argues that due regard be replaced by an obligation to ‘take such steps as are necessary and proportionate for the progressive realisation of equality.’²⁵⁶ However, this change of words does little either in a practical

²⁵⁰ United Nations, 'Committee on the Rights of Persons with Disabilities' [2017] CRPD/C/GBR/CO/1 Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland 10(b)

²⁵¹ Committee on the Rights of Persons with Disabilities, 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention – Report of the Committee' October 2016 14-15 and 20-21. *Ibid.*

²⁵² M Oliver, 'Understanding Disability: From theory to practice' (Palgrave 1996) 92-94.

²⁵³ B Hepple, 'The New Single Equality Act in Britain' [2010] *The Equal Rights Review* 11-24.

²⁵⁴ EQA 2010 Part 11 Chapter 1.

²⁵⁵ Hepple n. 253. 19.

²⁵⁶ *Ibid.*

sense to focus attention on outcomes or to increase equality because the word ‘proportionate’ adds another threshold for people with disabilities to meet in gaining access to their rights.²⁵⁷ The 2016 House of Lords Report²⁵⁸ included an extensive critique of the Public Sector Equality Duty (PSED). Primary concerns were that the PSED was less effective than the specific disability equality duty which was present in the Disability Discrimination Acts.²⁵⁹ As it is less specific and does not require organisations to produce reports identifying equality issues nor to set a timeline for when such issues will have been addressed or resolved. The concept of ‘due regard’ was critiqued on the basis that it was not specific enough and did not appear to fit with the aims of Equality legislation.²⁶⁰ The report highlighted a sense of reluctance on the part of government ministers to take responsibility for assessing the impact of certain measures on people with disabilities. This stemmed from a number of issues. Firstly, the Office for Disability Issues felt that it did not have the power to comment on the decisions of other departments and that the Office’s placement within the Department for Work and Pensions (DWP) skewed its involvement towards employment.²⁶¹ This report found that the Equality and Human Rights Commission was less effective in raising awareness of Disability related issues or the existence of legislation to assist people with disabilities than the now disbanded Disability Rights Commission (DRC), due to their differing remits.²⁶² The DRC aimed to: create a society ‘where all disabled people can participate fully as equal citizens’.²⁶³ Phrases such as ‘energetic’ and ‘fantastically good’²⁶⁴ used to describe the DRC indicate its impact. Trades Union Congress (TUC) stated in evidence that the DRC helpline was better publicised than the equivalent Equality and Human Rights Commission one and that there was a

²⁵⁷ AV Pearson, ‘What’s worth got to do with it? Language and the socio-legal advancement of disability rights and equality’ (2014) 20(3) Web JCLI. Section 8.

²⁵⁸ House of Lords n.171.

²⁵⁹ *Ibid.* Para. 337

²⁶⁰ *Ibid.* Para. 333

²⁶¹ *Ibid.* Paras. 97-115

²⁶² *Ibid.* Para. 352

²⁶³ Disability Rights Commission, *Evaluating the Impact of the Disability Rights Commission: Final Report*, September 2007, p 9

²⁶⁴ House of Lords n.171. Para. 120

greater sense of practical assistance.²⁶⁵

These arguments highlight the need for people with disabilities to be involved regarding legislative measures affecting them and to have awareness of avenues for remedies. Both objectives could be achieved through incorporating disability discourse into undergraduate liberal legal education because it could provide a framework to teach citizens how to identify potential issues and to consider how they might be remedied as well as the role of outside agencies.

Conclusion

This chapter has critically examined the human rights framework relating to disability and education at the national level to argue how the undergraduate liberal legal curriculum could be used to address thematic issues. It has considered how disability specific issues could be incorporated into the core areas of the curriculum to mainstream disability issues and carve out a space for discussing the strengths and weaknesses of the existing frameworks and how these may be overcome in the future. It explored how recent changes within the domestic framework, such as the funding for reasonable adjustments through DSA, have the potential to undermine the aims and purpose of the framework whilst at the same time emphasising its importance and building a case for the need to develop Proactive Critical Citizenship through rights education. The following chapter will draw together the themes explored in this and the preceding chapters and suggest how the issues raised could be resolved in practice with reference to both teaching practice and approaches to law and policy.

²⁶⁵ *Ibid.*

Chapter 6: Solutions

This chapter examines practical steps that institutions could take to develop a liberal legal undergraduate curriculum that incorporates discourse on disability and legal issues, with the discussion of specific cases outlined in the preceding chapters. The chapter will consider elements such as the use of universal design, participation and engagement by students and the wider community and the potential effects of legislative changes such as the Higher Education and Research Act (HERA) in April 2017.¹

Dignity and Identity

To explore issues around dignity, identity, law and disability, law schools could introduce a general jurisprudence module into the first year of the law degree, which would outline the base concepts of dignity, autonomy, equality, participation and education and their importance to law as a system, along with explorations of law's role within society as either a closed system as espoused by autopoiesis theory, a social system and a means for social change or a regulatory system.² It could briefly examine different theoretical approaches such as Critical Legal Studies (CLS), reification, and Expressive Law Theory as explored in the second chapter of this thesis.

The Introduction of Specialist Disability Modules

The genesis for this approach came from the approach taken by Leeds law school.³ The university has 'a broadening curriculum,' to develop skills and intellectual flexibility that enable students to compete and contribute in the workplace and wider society post-graduation.⁴ A number of these courses are built in to the core curriculum

¹ Higher Education Research Act 2017

² G Tuebner, *Autopoietic Law - A New Approach to Law and Society* (Walter de Gruyter and Co 1987) 1-6

³ University of Leeds, 'Broadening: Expand your academic horizons' <<http://leedsforlife.leeds.ac.uk/Broadening/Index>> accessed 2 May 2017

⁴ *Ibid.*

so that they form part of their degree course.⁵ This is an innovative and positive approach to the development of liberal interests alongside a chosen career path encourages students to engage with wider social topics without making it a distraction them from overall degree and career goals. The curriculum includes a specific disability law module. It explores the law's 'key role [...] in constructing a society in which disabled people (who make up approximately 15% of the UK's population) are able to live, flourish and contribute on an equal basis with others.[...] it aims to encourage students to reflect critically on law's potential to be 'enabling'- in the sense of facilitating full inclusion and equality for people who have or (have labels of) physical, sensory, cognitive, emotional or other 'impairments'.⁶ No prior legal knowledge is needed to join the module⁷, thus opening it up to a varied audience. There is a heavy link with DPOs and Human Rights Organisations.⁸ This opens the debates and criticisms explored in previous chapters. A criticism of the approach at Leeds could be that it demands a significant number of teaching and study hours from both students and staff and a specialist knowledge base which may not be available for a specific time across the timetable to allow a maximum number of students to benefit from it. The maximum class size is 20 students, 200 study hours, with 30 contact hours spread over two semesters.⁹ Assessment is by essay and written reflections.¹⁰ This is likely to be workable at Leeds, as they have a specific Disability Hub and a significant number of staff with an interest and expertise in relation to disability.¹¹ However, similar programmes of teaching could be devised to introduce disability related ideas into less specialist institutions. The University of Westminster has a specialised Disability Law module for third year students. It offers a practical example of a broad-based

⁵ *Ibid.*

⁶ University of Leeds, 'LAW3055 Disability Law' <<http://leedsforlife.leeds.ac.uk/Broadening/Module/LAW3055>> accessed 2 May 2017.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ University of Leeds, 'Disability Law Hub' <<http://www.law.leeds.ac.uk/research/disability-law-hub>> accessed 2 May 2017

understanding of disability and the law which could be included within undergraduate legal curricula. It has wide coverage concerning disability including goods, facilities and services, travel, schools and higher education, disability and human rights and equality duty.¹² Students select a topic to lead a workshop on and write a 4,000 word essay.¹³ This offers students the opportunity to enter into a dialogue by running a seminar and to evaluate and internalise others' arguments and their own in a written paper, mirroring the requirements for a truly liberal understanding of any subject in law as espoused by Bradney and others.¹⁴

Modes of delivery: lectures or seminars?

Large-scale lectures are a cost effective way of introducing key information to large numbers of people.¹⁵ However, Bligh argues that lectures are not as effective as discussion for promoting thought because students are passive.¹⁶ He highlights that studies showed that if students are required to learn to think they must be given situations where they have to do so and these situations require them to answer questions and have an active response to problems.¹⁷ Bligh bases these assumptions on the work of the Gestalt School which argues that problem solving requires five processes; recognising the problem, gaining familiarity of its elements and the concepts involved, constantly reorganising the elements, possibly incorporating a considerable period of irrelevant activity or inactivity and culminating in a flash of insight displayed by demonstration of the solution.¹⁸ Consequently, lectures alone would not enable students to consider issues in relation to disability or other protected characteristics. These would need to be supplemented with tutorial and seminar discussions.

¹² S Bunbury 'School of Law Department of Academic Legal Studies LLB Disability Law' (2014-15 University of Westminster) 3

¹³ *Ibid.* 6

¹⁴ A Bradney, 'Liberalising Legal Education' in F Cownie, *The Law School – Global Issues, Local Questions* (Ashgate Publishing Limited, Hampshire 1999)

¹⁵ D A Bligh, *What's the use of lectures?* (Jossey-Bass Publishers 2000) 3-8

¹⁶ *Ibid.* 9-10

¹⁷ *Ibid.*

¹⁸ *Ibid.* 11

Discussing the cases highlighted in the preceding chapter could create natural pauses to integrate disability narratives into general teaching. This has several advantages. Firstly, it is likely to reduce resistance on the part of staff, who may have concerns about additions to teaching loads. Secondly, students are likely to be more receptive to exploring these ideas if they can see how they fit to the overall progression of their studies and degree, rather than something to learn in the abstract, which may help students contextualise and apply concepts to familiar areas of knowledge. This may be particularly useful in engaging students with vocational focus in disability related discussions as they can see how they may arise in practice or other professional contact. Bligh highlights that lectures are inappropriate medium to change student attitudes, social adjustment or to inspire interest in a subject.¹⁹ Consequently, it is important for universities to invest in assisting staff members to become engaged lecturers. However, this is unlikely to be a priority until the gap surrounding educational theory within law schools, as identified by Cownie,²⁰ is closed. Moreover, there is a case for cross-disciplinary involvement in additional lecture programming on the foundational concepts of dignity, autonomy, participation and education.

Calling on faculty members from across institutions such as social policy, philosophy and education, is likely to ensure that students receive lectures with enthusiasm and familiarity with the subjects to engender enthusiasm within the students. To establish effective team based design of curriculum, staff members must understand that they have the power to drive and inhibit change. They must take ownership of the context of their teaching and the pedagogy that informs it. Focus needs to move beyond eLearning to assessment practice and strategic curriculum directives bringing together multiple teams and disciplines to share practice and foster creativity. This requires commitment and resources in a culture that 'legitimises innovation' and gives support

¹⁹ *Ibid.* 17-20.

²⁰ F Cownie, 'The Importance of Theory in Law Teaching' (2000) 7 *International Journal of the Legal Profession* 236.

to staff and departments working together on courses for extended periods to develop the skills needed to evaluate student experience.²¹ Not every institution will have on site access to such expertise depending on their teaching focus or structure. Creating networks between institutions to share specialised expertise, similarly to the Doctoral Training Partnerships,²² institutions could share resources, such as recorded lectures, podcasts, webinars and discussion boards through Virtual Learning Environments or websites, which could link up with an established organisation such as the Socio-Legal Scholars Association (SLSA).²³ University of Leeds Disability Studies Hub publishes many disability and legal texts via their Open Access Disability Archive.²⁴ However, copyright presents issues for wide spread use, due to uncertainty around copyright to academic work.²⁵ Although copyright is attributed automatically,²⁶ Rahmatian identifies that the policy of new managerialism and marketization within universities have turned copyright ownership amongst institutions into valuable commodities under Intellectual Property rights though the literature on this is not yet fully developed.^{27,28} Moreover, he argues that copyright is controversial because academics fear the commodification of their work. University policies concerning intellectual property are unclear because they deal with intellectual property in the broader rather than specific. fails to understand the purpose and protection given by different rights.²⁹ The current approach discounts the reasons why academics publish and the process of academic publishing and the need for the academic rather than the university to engage with

²¹ JA Dempster and others, 'An academic development model for fostering innovation and sharing in curriculum design' [2012] 49(2) *Innovations in Education and Teaching International* 145

²² Arts and Humanities Research Council, 'Doctoral Training Partnerships' <<http://www.ahrc.ac.uk/skills/phdstudents/fundingandtraining/dtps/>> accessed 30 May 2017 and EPSRC, 'Doctoral Training Partnership (DTP)' <<https://www.epsrc.ac.uk/skills/students/dta/>> accessed 30 May 2017

²³ SLSA, 'About the SLSA' <<http://www.slsa.ac.uk/index.php/what-is-slsa>> accessed 30 May 2017

²⁴ University of Leeds, 'The Disability Archive UK' ([Http://disability-studies.leeds.ac.uk](http://disability-studies.leeds.ac.uk), 2017) <<http://disability-studies.leeds.ac.uk/library/>> accessed 10 July 2017

²⁵ A Rahmatian, 'Make the butterflies fly in formation? Management of copyright created by academics in UK universities' [2014] 34(4) *Legal Studies* 717

²⁶ *Ibid.* 712-717

²⁷ *Ibid.* 711-712

²⁸ The author refers to a work of his own, A Rahmatian *Copyright and Creativity: The Making of Property Rights in Creative Works* (Cheltenham: Edward Elgar, 2011) pp 228, 252, 255.

²⁹ A Rahmatian, n. 25.

journals on their own behalf.³⁰ Shavell argues for the abolition of copyright in the academic context arguing that it is redundant in the academic world because the main benefit of academic publishing is scholarly esteem³¹ and contribution to society rather than monetary gains.³² However, he concedes that removing copyright could lead to academics having to bear the cost of publication for themselves.³³ However, he argues that there would be possibility of universities subsidising these costs to prevent a fall in incentive to publish.³⁴ He argues that this would have several benefits, asking universities to subsidise publishing costs means that they are more likely to insist on a particular quality or standard of journal publication. Thus, improving the overall quality of publishing and research at institutions.³⁵ Additionally, moving to Open Access would mean that universities would no longer have to pay subscription fees, nor would publishers need to copyright works, lessening cost.³⁶

There are several issues with Shavell's arguments regardless of potential legal validity. Firstly, he fails to deal with how the reduction of income to journals would impact in terms of employment of academics outside of universities, acknowledging that many universities accept online submissions and communicate via email which reduces admin costs.³⁷ Furthermore, he fails to consider the possible negative impact of subsidising based on perceived calibre and ranking of journals. This could silence new voices from research outputs regardless of the value of their contribution. Shavell's argument is inconsistent because he proposes that textbooks and compilations should be treated differently to articles.³⁸ He argues that the conversion of traditional journals

³⁰ *Ibid.* 734-735

³¹ S Shavell, 'Should copyright of academic works be abolished?' [Spring 2010] 2(1) *Journal of Legal Analysis* 301

³² *Ibid.* 302

³³ *Ibid.*

³⁴ *Ibid.* 303

³⁵ *Ibid.*

³⁶ *Ibid.* 303-4

³⁷ *Ibid.* 319

³⁸ *Ibid.* 339-340

to Open Access journals is potentially problematic.³⁹ However, Shavell's and Rahmatian's approach to copyright could be blended to achieve collaboration and resource sharing between universities via Generalised IP agreements and growing appreciation of Open Access publishing. Recent changes in copyright law by the government have made it easier for education institutions to use copyrighted material to allow them to reproduce academic works under certain conditions: the work is used solely to illustrate a point, the use of the work must not be for commercial purposes, the use must be fair, and any material must be sufficiently acknowledged.⁴⁰

Bligh highlights the importance of moving students from surface to deep learning.⁴¹ There is a potential obstacle to utilising small group teaching on a wide scale within universities. The preparation of either recorded video lectures or sound files and the designing of assessments and learning exercises is greater than in the traditional lecture formula,⁴² if students are expected to return to lecture recordings as part of their learning process, this changes the lecture from something which is partially ephemeral where students self-edit information during note taking to something with a degree of permanence which will be revisited by students after the fact. Consequently, lecturers must ensure that any recordings are free of misunderstandings and ensure that lighting and sound quality is appropriate, and to remove technical glitches and bugs.

The University of Northampton Waterside approach acknowledges this potentially time intensive aspect of Blended Learning and offers avenues of support and recommendations to overcome difficulties with student engagement when implementing the new approach. The length and depth of the advice with multiple

³⁹ *Ibid.* 338-339

⁴⁰ Intellectual Property Office, 'Exceptions to copyright: Education and Teaching' (*gov.uk*, October 2014)

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/375951/Education_and_Teaching.pdf> accessed 10 July 2017 3

⁴¹ Bligh n. 15. 61

⁴² S E Park and T H Howell, 'Implementation of a Flipped Classroom Educational Model in a Predoctoral Dental Course' [May 2015] 79(5) *Journal of Dental Education* 568-569

referrals to onsite support, may lead to staff becoming unreceptive to change due to perceived difficulties.⁴³ The need for departmental and institutional support in implementing changes to learning and teaching practices has been identified in relation to issues of collaboration.⁴⁴ Becher and Trowler highlight that in the Humanities, collaboration can be less common⁴⁵ due to differences in research practices and expectations within certain disciplines. They highlight that collaboration can be discouraged by a desire of academics to raise their professional profiles by being solely responsible for a piece of work.⁴⁶ In terms of this thesis, collaboration could be viewed as a means of advancing and achieving the implementation of Disability rights in practice in education. This has been the collective desire of the Disability Movement and other academics in the development of the Human Rights framework in relation to disability at domestic, supranational and international levels as demonstrated in the content of the substantive chapters of the thesis.

The Higher Education Academy 'What Works?' reports⁴⁷ concerning student retention and engagement in universities⁴⁸ found that students responded better to interventions that were relevant to their studies, and that increased levels of engagement and belonging both at an institutional and procedural level and relationships with peers meant that dropout rates decreased.⁴⁹ Bligh highlights that asking questions during lectures may assist in the development of student curiosity.⁵⁰ This is compatible with a critical pedagogy approach to education because it moves away from the Socratic

⁴³ E Palmer, Dr S Lomer and I Bashliyska 'University of Northampton Overcoming barriers to student engagement with Active Blended Learning' (*northampton.ac.uk*, May 2017) <<https://www.northampton.ac.uk/ilt/wp-content/uploads/sites/2/2017/05/Student-Engagement-with-ABL-Interim-Report-May-2017-v2.pdf>> accessed 10 July 2017

⁴⁴ Dempster n. 21

⁴⁵ T Becher and P R Trowler, *Academic Tribes and Territories* (2nd edn, SRHE and Open University Press 2001) 122-24

⁴⁶ *Ibid.*

⁴⁷ L Thomas and others, 'Supporting student success: strategies for institutional change What Works? Student Retention & Success programme Summary Report' <file:///S:/Downloads/what_works_2_-_summary_report.pdf> accessed 16 May 2017 4, 5 and 28.

⁴⁸ *Ibid.* 28

⁴⁹ *Ibid.*

⁵⁰ Bligh n. 15. 62

model of teaching enabling students to interact with information to form their own opinions creating conscientisation as identified by Freire.⁵¹ However, Bligh highlights that this style of lecturing will not suit all learners because some will not be responsive to novelty.⁵² It would be necessary to ensure that lectures offer a balance between this and other approaches to give students time to develop confidence with both tutors and their peer group.⁵³ He argues that the fear of failure evokes minimum effort while a drive to achieve evokes maximum effort.⁵⁴ It is important to give instructional learning objectives at the beginning of lectures as students can relate what they have heard to the overall objectives that they wish to fulfil.⁵⁵ This highlights the importance of defining objectives for students when introducing new elements such as disability to the undergraduate curriculum to lessen the potentially negative impact of fear and unfamiliarity on their ability to engage the issues presented. Lastly, Bligh draws attention to the importance of activity and esteem which focused on the involvement of students in how future courses are delivered and when they receive praise because this develops a sense of feedback which is not present in lecturing alone.

Lectures and Access

Lecture Capture (the umbrella term for recording lectures to play back later), could be used to increase accessibility of lectures for students with disabilities.⁵⁶ There has been a significant amount of literature concerning student responses to it and its design features.⁵⁷ There is an emerging literature concerning issues of use. These included the

⁵¹ P Freire, *Pedagogy of the Oppressed* (3rd edn, Continuum 2005) 109

⁵² Bligh n. 15. 62

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Ibid.* 63

⁵⁶ A R Lombardi and C Murray, 'Measuring university faculty attitudes toward disability: Willingness to accommodate and adopt Universal Design principles' [2011] 34(1) *Journal of Vocational Rehabilitation* 43-56, G Newton and others, 'Use of Lecture Capture in Higher Education – Lessons from the Trenches' [March/April 2014] 58(2) *TechTrends* 34, S Watt and others, 'Lecture Capture: An Effective Tool for Universal Instructional Design?' [2014] 44(2) *Canadian Journal of Higher Education* 1-29, G Hughes and P Robinson, 'Photonote evaluation: aiding students with disabilities in a lecture environment'

<<http://www.cl.cam.ac.uk/~pr10/publications/assets07a.pdf>> accessed 26 May 2017

⁵⁷ See for example a literature review by LSE A Karnad, 'Student Use of Recorded Lectures: A report reviewing recent research into the use of lecture capture technology in higher education, and its impact

need for increased technology and practical support for staff to assist student access.⁵⁸ Design must consider student's technical competencies and internet access.⁵⁹ Another issue was fear of changing expectations and practices and copyright infringement by students on other courses.⁶⁰ As discussed in the previous chapter, a number of concerns have been raised about lecture capture despite its usefulness in the wake of DSA cuts.⁶¹ Staff at one institution expressed concerns that Lecture Capture may be used by managers to monitor lectures and manage performance and expressed worries about the possibility of students uploading them onto YouTube which could expose the staff to ridicule.⁶² Another concern was that the content could be used for internet only courses without reference to the lecturer after they had left the institution meaning that staff could lose intellectual rights to their lectures.⁶³ There was resistance to providing copies of lecture slides to students, as this encourages students to copy an academic's notes.⁶⁴ The University and College Union (UCU) said that management were simply not taking on board staff concerns about the project and that the Union had withdrawn its support for the policy at De Montfort.⁶⁵ The language used in the article reveals attitudes about adjustments for people with disabilities. The opening sentence of the article states 'Academics at a UK university will soon have to record their lectures to help their institution meets its obligations to disabled students'.⁶⁶ 'Will soon have to' indicates the altering of long-standing behaviour and has connotations that these alterations are both unwarranted and unwelcome because it is as though the writer is intimating that the system has worked fine for many years but will have to

on teaching methods and attendance' <http://eprints.lse.ac.uk/50929/1/Karnad_Student_use_recorded_2013_author.pdf> accessed 26 May 2017

⁵⁸ E Zhu and I Bergom, *Lecture Capture: A Guide for Effective Use* (CRLT Occasional Paper No 27 2010) 3-4

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ J Grove, 'Disability cuts lead to universal lecture capture policy'

<<https://www.timeshighereducation.com/news/disability-cuts-lead-to-universal-lecture-capture-policy>> accessed 26 May 2017

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

change for a specific group of people. This tone is emphasised by the choice of words ‘obligations to disabled students’ which makes it sound as something that they are being forced, rather than choosing to do. Moreover, ‘simply’ and ‘vexed’ indicate both a misunderstanding about the needs of students with disabilities and the impact of failing to provide the correct adjustment. There is a sense of underlying annoyance at the requirement to meet their needs. Institutions are concerned that increased use of Lecture Capture may adversely affect lecture attendance. However, Queens University Belfast found that students used the lectures to reinforce their learning particularly during assessment periods.⁶⁷

Small group teaching

This project proposes that a mixture of small group teaching and lectures could facilitate critical legal discussions by providing students with defined spaces. Lectures where they are presented with information and given time to digest and evaluate it before engaging in critical discussions in a small group setting. Jaques explores some issues that can affect effective group teaching.⁶⁸ These include the tendency of teachers to lecture rather than engage in a dialogue with students, the tendency of teachers to talk too much, the desire for students to be given solutions to problems rather than work towards them themselves, difficulty of engendering conversation between students rather than merely as answers to tutor’s questions, failure of students to prepare for sessions and students dominating or blocking discussion from others.⁶⁹ Jaques considers a number of seating configurations⁷⁰ to enable groups to interact together such as horseshoe seating, snowball groups⁷¹ and incorporating short periods

⁶⁷ A McGowan and P Hanna, 'How Video Lecture Capture Affects Student Engagement in a Higher Education Computer Programming Course: A Study of Attendance, Video Viewing Behaviours and Student Attitude' [2015] Paper presented at eChallenges 2015 IEEE Conference, Vilnius, Lithuania

⁶⁸ D Jaques, 'ABC of learning and teaching in medicine Teaching small groups' [2003] 326(1) BMJ 492-494

⁶⁹ *Ibid.* 492

⁷⁰ *Ibid.* 493

⁷¹ *Ibid.*

of individual work,⁷² before calling the group back together to promote group cohesion but prevent tutors from taking control. Jaques emphasises the importance of eye contact to increase participation.⁷³ However, for students with disabilities, such as autism or students from different cultural backgrounds, eye contact can be a barrier to participation because it is seen as challenging rather than inclusive, which was highlighted in May 2017 in response to guidance issued by Oxford university.⁷⁴ Jaques argues that these ways of working enable tutors to maintain a sense of control and stimulate discussions where necessary but prevents them from only engaging with more vocal members of the group.⁷⁵

Dark considers how to raise potentially sensitive topics within classes and how to overcome the issues that this can present.⁷⁶ However, she argues that the way to overcome this is to acknowledge that everyone has biases and that the importance is to recognise them and to set them aside when they are not useful.⁷⁷ She argues that some students will be uncomfortable with discussions about topical issues and that they may shift this discomfort to the teacher by complaining about issues such as reading load as she believes that shifting the focus is easier for students to deal with than addressing the personal reasons behind their discomfort.⁷⁸ She argues that the way to combat this is for the professor to take charge of introducing any bias and to be alert to any unintentional offence that may be caused and to control any heated debates such this arise as well as to surmount their own potential feelings and vulnerability when engaging with these issues.⁷⁹ Dark argues that it is important to give

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ C Turner (The Telegraph), 'Oxford University apologises for 'everyday racism' advice which offended autistic people'

<<http://www.telegraph.co.uk/education/2017/04/29/oxford-university-apologises-everyday-racism-advice-offended/>> accessed 5 May 2017

⁷⁵ Jaques n. 68.492

⁷⁶ OC Dark, 'Incorporating Issues of Race, Gender, Class, Sexual Orientation, and Disability into Law School teaching' [1996] 32(3) Willamette Law Review 557

⁷⁷ *Ibid.*

⁷⁸ *Ibid.* 558

⁷⁹ *Ibid.* 558-559

students a chance to discuss how the incorporation of vulnerability issues into courses has either helped or hindered their learning experience and suggests doing this anonymously through exam questions.⁸⁰ However, exams are not the only way to explore these issues. The subjective answers that the students may give are difficult to grade and placing in an exam context may make students feel that they must demonstrate a full sense of receptiveness or tolerance to pass an exam. This is patronising to people who share the characteristics discussed and has the potential to render any academic discussions as tick-box rather than meaningful exercises.

A veneer of acceptance or worse legality can do more harm than good in advancing and protecting human rights.⁸¹ To address some of these issues, Dark argues that it is important to students to build up respectful relationships with students in order that they can control situations that become heated appropriately and to make students feel that they have access to the classroom and are able to express their views and have them challenged.⁸² Dark advocates creating small groups within the classroom to enable students to split into groups to examine a particular problem or proposal and then come back together before the end of the class to communicate their ideas to other students. However, she argues that it is vital that students are given time to reflect both on these individual interactions but the class discussion as a whole.⁸³ She comments that this type of approach can help to build up the necessary sense of trust between students and the teacher because this will help participants to listen more closely, to pause before making a judgement and give the benefit of the doubt in the case of unfortunate phrasing or inappropriate viewpoint.⁸⁴ Dark offers helpful advice of how to deal with students who express an unpopular viewpoint and are the

⁸⁰ *Ibid.* 560-564

⁸¹ O Lewis, 'Disabling Legal Barriers' (University of Leeds, 2016)

⁸² OC Dark, 'Incorporating issues of race, gender, class, sexual orientation, and disability into law school teaching' [1996] 32(3) *Willamette Law Review*. 564-566

⁸³ *Ibid.* 567

⁸⁴ *Ibid.*

recipients of personal attacks.⁸⁵ She notes that a possible way to remedy this is to take the position of the student being challenged regardless of whether the tutor agrees with the standpoint or in the case of bigoted remarks make explicit the underlying assumptions that precipitated such a viewpoint in order that the class knows that they are not endorsed by the tutor but that the issue is not left unchallenged or unanswered nor does it prevent the flow of discussions within the class.⁸⁶ Moreover, she argues that when uncomfortable instances arise it is important to consider the intent behind the language used and to respond in such a way that helps students to develop strategies to deal differently with topics in the future.⁸⁷ The author gives the example of nervous laughter citing that she asks students to critique why this occurred in response to an opinion and that this should be acknowledged as a way of expressing discomfort with the views expressed but that this diffused the situation to enable students to critique the standpoint of the person using the offensive language but to agree with them on points where they felt the argument had relevance,⁸⁸ thus preserving an attitude of openness and relations between students which prevents the silencing of 'offensive' students but allows them to reconsider their choice of words and to continue participating in future discussions.⁸⁹ Dark however highlights an important element in discussing diversity issues within the legal classroom and that is to ensure their relevancy to legal theory and doctrine regardless of how interesting the tutors themselves may find it to be.⁹⁰

Dark notes the importance of active listening in allowing the tutor to monitor the responses of speakers and those listening enables the tutor to read and remain in control of the classroom environment.⁹¹ This enables the tutor to ensure that they are

⁸⁵ *Ibid.* 568

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Ibid.* 568-569.

⁸⁹ *Ibid.* 569

⁹⁰ *Ibid.*

⁹¹ *Ibid.* 570

utilising a wide range of materials to communicate these issues to the class and that they are maximising student learning potential by understanding the diversity that exists within the classroom itself as well as society.⁹² Furthermore, Dark states that silence can be useful in the discussion of diversity issues in legal education,⁹³ Arguing that ‘silence can help students focus on the underlying assumptions that he or she may be making regarding the efficacy of affirmative action.’⁹⁴ She states that she sometimes builds silences into the classes and that it is important to explain the purpose of the silences to students and to make sure that everyone has the same time for reflection before the silence is broken again.⁹⁵ Dark argues that these silences can serve the purpose of reminding students as to why these discussions are important and why they are uncomfortable for both them and the law to engage with.⁹⁶ She comments that it is important to get students to embrace and use silence rather than avoid it.⁹⁷ Lastly, Dark notes that preparation is key in raising diversity issues in the law classroom and that looking to outside sources is important in seeing how diversity issues can be applied to areas where their impact may not immediately be apparent.⁹⁸

Adams et al⁹⁹ offer a course design to combat ‘ableism’ in education. This differs from critical pedagogy approaches as it appears to impose a set of values on students. The course objectives are written in definite terms regarding what the students will achieve. ‘Participants will increase awareness of ableism and its manifestations at the individual, institutional and cultural levels.’¹⁰⁰ Further examples include ‘participants will increase understanding of the experience of living with disability in an ableist society’ and ‘participants will learn strategies for eliminating ableism.’¹⁰¹ The book offers an

⁹² *Ibid.* 570-571

⁹³ *Ibid.* 572

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ *Ibid.* 573-574

⁹⁹ M Adams and others, *Teaching for Diversity and Social Justice* (Taylor & Francis 2007)

¹⁰⁰ *Ibid.* 342

¹⁰¹ *Ibid.* 343

overview of potential modules for such a course including ‘Socialisation and definitions,’ ‘Historical, institutional and cultural perspectives,’ ‘Voices of people with disabilities’ and ‘Taking action.’ This approach is problematic because it maintains disability as a separate niche issue rather than a global one across education, which increases rather than diminishes the notion of ‘the other’. The suggestion that students invite representative panel members into the classroom to discuss disability issues¹⁰² is problematic because it is reminiscent of a gameshow and that people with disabilities are displayed as academic curios. Moreover, the advice to recruit panel members from places such as Independent Living Centres suggests an element of potential exploitation because living visibly in a community as a person with a disability, participants may feel obliged to take part. Though there is a reminder to ‘assure panellists that they will have complete discretion as to how much personal information they share,’¹⁰³ ‘students are encouraged to ask panellists to briefly describe their disability and to focus on their remarks on personal experiences that illustrate ableism and provide insight into the Disability Rights Movement and their own empowerment.’¹⁰⁴ Example questions are: ‘What is your disability and how long have you had this disability?’ ‘How did your family and friends react to your disability?’ ‘As a person with a disability what has been your experience in trying to find employment?’ ‘What are some things you love about your disability?’ ‘What has your disability taught you?’ ‘What do you think the role of temporarily able-bodied people is in the disability rights/independent living movement?’ ‘How can temporarily able-bodied people be allies to people with disabilities?’¹⁰⁵ These questions are demonstrative of an approach to disability engagement which appears to have an underlying expectation of a certain sense or perception of empowerment and feeling about disability which is born out of a social anxiety to combat previously negative perceptions and reactions to disability

¹⁰² *Ibid.* 351

¹⁰³ *Ibid.* 351-352

¹⁰⁴ *Ibid.* 352

¹⁰⁵ *Ibid.*

by automatically assuming that everybody's experience is now positive and in some way part of their identity. These elements are particularly evident in questions about what disability has taught them, what do they most love about their disability and the concept of 'temporarily able-bodied' people becoming allies of people with disabilities.

The term 'temporarily able-bodied' is problematic, because it fails to acknowledge that the privileges experienced, and the cultural capital gained¹⁰⁶ as an 'able-bodied person' are not necessarily temporary and in contrast, it undermines the permanence of the disparity between the experiences of people with lifelong disabilities and people without disabilities. Moreover, though the guidance states that students should respect participants rights not to answer questions if they do not wish to, some of the questions are very personal and would not be asked by people in general social interactions such as what are your experiences in employment and how did your family and friends react to particularly private and personal developments in your life. This highlights again that people with disabilities are being used in this situation almost as social exhibits to prove that things happen to them by providing examples or 'insights' into their experiences for people without disabilities. This is particularly striking in the context of the existence of a great number of research pieces and official statistics concerning the experiences of people with disabilities which could be used as a teaching resource. This book was published in 2007 meaning that it was written in the context of an understanding of the importance of emancipatory rather than exploitative research concerning disability as explored by Oliver in the 1990s.¹⁰⁷ However, there is a positive element of the course design suggested, journal writing¹⁰⁸, which could be useful in the context of the introduction of disability discourse into undergraduate liberal legal education because it provides a space for students to reflect privately on what they

¹⁰⁶ P Bourdieu and JC Passeron, *Reproduction in Education, Society and Culture* (2nd edn, Sage Publications 2000) 30

¹⁰⁷ G Mercer, From critique to practice: Emancipatory Disability Research. in C Barnes and G Mercer (eds), *Implementing the social model of disability: Theory and research* (Disability Press 2004) 118-137.

¹⁰⁸ M Adams n.99. 346

have been exposed to and to connect with and explore their preconceived notions of and understandings about disability. This could be useful because it would give students a space to organise their thoughts before expressing them to a group of their peers or in an assignment which may make them more comfortable with doing so at a later stage and it gives them an opportunity to chart the development of their own thoughts and feeling and ways of thinking around disability which may be useful in future contexts such as work because they will have an understanding of the process of attitudinal change and formulation. Another positive element of the course design presented in the book is that it has the potential to provide a framework for staff to be able to consider how they might begin to teach around disability discourses with little or no prior experience because it demonstrates broad topic areas and how to fit tasks together so that they build towards an aim of making students more familiar with disability issues. This may help staff to overcome their reticence in introducing these discourses into the curriculum. Grace and Gravestock consider how staff can incorporate inclusion within their teaching practices.¹⁰⁹ Chapters deal with issues such as diversity in the classroom, invisible factors affecting student learning, stereotypes, barriers to learning, barriers to communication as well as encouraging staff to understand the legislative position in relation to inclusion of students with protected characteristics. Chapters are posed in the form of questions to staff and include a ‘pause for thought section’ where staff are encouraged to relate the content of the chapter to their own practice. ‘Do I demonstrate examples of disability etiquette?’¹¹⁰ Whilst the phraseology ‘etiquette’ has the potential to be read negatively or to make people worry about what is the right etiquette, the fact that the book draws attention to issues that might inadvertently occur for students with disabilities is positive. Examples include how to structure a lecture or seminar where a sign language interpreter is present and guidance on building in breaks into the session for both the

¹⁰⁹ S Grace and P Gravestock, *Inclusion and Diversity: Meeting the needs of all students* (Routledge 2009)

¹¹⁰ *Ibid.* 91

student and the support worker, to ensure that any questions are addressed to the student rather than the support worker and that even though it may not be the student who is speaking, to listen to the student rather than the support worker. Others include not drawing attention to the presence of the support worker as students may not always wish for their peers to know that they use one. Other advice includes things to be considered for students who rely on lip reading such as lighting and making sure faces are visible always. Corker highlights the need to consider the status of language of law for people with particular disabilities, such as those who use sign language when accessing or being represented in and by discussions about law.¹¹¹ It is important for any consideration of disability and for the curriculum generally to take the needs of non-verbal language users into account.

Classroom context

The Role of Universal Design

Universal design is defined by the CRPD as ‘[...] the design of [...] programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.’¹¹² It does not exclude the need for assistive devices for certain groups if necessary.¹¹³ This definition led to seven principles of universal design. These are: equability of use, flexibility of use, simple and intuitive use, perceptible information, tolerance for effort, low physical effort, size and space for approach and use.¹¹⁴ This project argues that incorporating these principles automatically into course design and pedagogic approaches would increase accessibility for all students regardless of disability status and improve student experience overall. Embodying the principles within teaching practice tutors could use examples to

¹¹¹ M Corker, The UK Disability Discrimination Act disabling language, justifying inequitable participation. in L Francis and A Silvers (eds), *Americans with Disabilities: Exploring Implications of the Law for Individuals and Institutions* (Routledge 2000) 360-364

¹¹² CRPD Article 2

¹¹³ *Ibid.*

¹¹⁴ Centre for Excellence in Universal Design, 'The 7 Principles' (*universaldesign.ie*, 2014) <<http://universaldesign.ie/What-is-Universal-Design/The-7-Principles/>> accessed 14 November 2017

discuss the importance of accessibility and other elements of disability rights with students. Moreover, in the context of changes to DSA, embracing universal design principles could have the potential to lessen student anxiety around access with decreased levels of support.

The Jisc website offers advice to institutions about access to resources by students with disabilities.¹¹⁵ Whilst this advice is comprehensive, there is an underlying discourse of a minimalist approach to adjustments. A section of guidance encourages institutions to distinguish between essential, desirable and value-added elements of accessibility which states ‘don’t make things more accessible than they need to be for the learner requesting them but keep the file. When a learner comes along who needs more accessibility add it’.¹¹⁶ Such a statement appears incompatible with the anticipatory tone of the seven principles. A further example of an underlying discourse of seeing reasonable adjustments as an inconvenience can be seen on the Jisc website and its discussion of access to self-service resources for students with disabilities as a means of making them ‘more independent’, ‘our guidance on student self-service options can help you to help them be more independent.’¹¹⁷

This appears to corrupt the concept of independence in relation to disability and to couch it in notions of empowerment to provide a get-out clause for universities to shift responsibility for accessibility back onto students. This link of a traditionally positive concept with a negative burden upon people with disabilities is problematic. They are having to do more work than people without disabilities to access resources and their rights. This is reminiscent of the medical model rhetoric and ideas that people

¹¹⁵ Jisc, ‘Supporting an inclusive learner experience in higher education: Looking at elements of the student experience where institutional practices and policies can make the learner experience much more inclusive’

<<https://www.jisc.ac.uk/guides/supporting-an-inclusive-learner-experience-in-higher-education>>
accessed 11 April 2017.

¹¹⁶ *Ibid.*

¹¹⁷ Jisc n. 115.

with disabilities must submit to inconvenient modifications to access the same rights or resources as people without disabilities. Additionally, there is little discussion of the need for quality control and consistency. Moreover, the use of the words and concepts such as empowerment and independence in such a way are problematic. The free RNIB Bookshare service for universities within the UK currently offers access to 21,794 titles in various formats to assist students with a wide range of needs.¹¹⁸ This offers a way to achieve standardisation and parity of access.¹¹⁹¹²⁰ Books can be requested and submitted to the collection.¹²¹ This would provide academics at institutions with an opportunity to ensure the accessibility of their own work and publications and to contribute directly to the widening of access by students with disabilities to education.¹²² As the collection can be accessed by overseas institutions this could provide opportunities for British academics to contribute accessible works and consequently ideas to the development of disability rights discourse in Europe and other countries in a post-Brexit world.¹²³

The Jisc website highlights the potential of using student note takers as an ‘affordable alternative’ to professional services. Though there is brief mention of the need to manage this in a professional way to ensure that effective and quality support is provided, failure to discuss the existence of outside services of professional providers suggests that it is the economic matter rather than the quality of the support that is paramount. Goode’s work¹²⁴ examining the experiences of students accessing support, both formal and informal at one institution¹²⁵ indicates the difficulties and anxieties

¹¹⁸ RNIB Bookshare, ‘Who qualifies?’ <<https://www.rnibbookshare.org/cms/bookshare-me/who-qualifies>> accessed 30 May 2017.

¹¹⁹ *Ibid.*

¹²⁰ RNIB Bookshare, ‘RNIB UK education collection for print-disabled learners including those with dyslexia or who are blind or partially sighted’ <<https://www.rnibbookshare.org/cms/>> accessed 11 April 2017

¹²¹ RNIB Bookshare, ‘Request and share’ <<https://www.rnibbookshare.org/cms/requestandshare>> accessed 30 May 2017.

¹²² CRPD Article 24 (3)(a)

¹²³ RNIB Bookshare n. 120

¹²⁴ J Goode, ‘Managing’ disability: early experiences of university students with disabilities’ [2007] 22(1) *Disability & Society* 35-48

¹²⁵ *Ibid.* 37-38

that students can face when access to support is neither formalised nor correctly managed.¹²⁶ Though this article is ten years old it is still relevant to this thesis because it gives an indication of the value and importance of DSA funding which still exists today as examined in the UK chapter regarding responses to proposed changes.¹²⁷ Goode highlighted a disparity between students who were comfortable with claiming their disability status and who wanted to take an activist stand to accessing their rights and those who did not wish to be seen as making a fuss.¹²⁸ This demonstrates the importance of inculcating a sense of proactive critical citizenship throughout higher education and society. The absence of marginalised voices should not measure success. Additionally, making students with disabilities reliant on other students to access support may lead to them making their ambition and progress secondary to somebody else and unable or unwilling to speak up if students are unreliable due to worry about the reaction of the note taker or their peers as a result. However, the Jisc website champions the recording of lectures and gives clear instructions on the provision and quality of these resources.¹²⁹ It highlights that institutions should view their approach to accessibility as something to take pride in¹³⁰ and the importance of considering new approaches¹³¹ to content production and the role of social media rather than being bound by market resources.¹³²

Kroeger questions the utility of a tick box approach to universal design in terms of achieving accessibility.¹³³ She argues that design should be considered as a moral and social justice issue to achieve greater access and participation within the world, and

¹²⁶ *Ibid.* 41-43 and 45

¹²⁷ D Willetts, 'Higher education: student support: changes to Disabled Students' Allowances (DSA)' (Department for Business, Innovation & Skills and The Rt Hon David Willetts, 7 April 2014) <<https://www.gov.uk/government/speeches/higher-education-student-support-changes-to-disabled-students-allowances-dsa>> accessed 18 October 2016.

¹²⁸ Goode n. 124 41-43

¹²⁹ Jisc n. 115.

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ S Kroeger, '13th Annual Disability Lecture the Power of Design: Exclusion or Inclusion?' <<http://sms.cam.ac.uk/media/2227966>> accessed 15 May 2017

that universal design must become part of pedagogy.¹³⁴ Additionally, she highlights the importance of understanding that accessible environments are a privilege and that taking ownership of that privilege is an important step in realising the importance of accessibility to social participation.¹³⁵ However, privilege is a contentious concept in this context because it creates a connotation of indebtedness which is suggestive of gratitude which is incongruous with the notion of substantive equality for people with disabilities because people without disabilities do not have to be grateful for the ability to access society because they made it. She highlights similar concepts to this in her critique of individualised approaches to accommodation by teaching staff arguing that it can lead to a situation whereby support advisors feel like they must convince students to accept these offers made to them for accessibility rather than seeking to ensure that the thought processes behind then change to ensure full access.¹³⁶ Similarly to the arguments in this thesis, Kroeger highlights the importance of a general understanding of the role that design plays in ensuring accessibility which along with her arguments for recognising the importance for advocacy regarding disability issues should be used to empower both staff and students in the process of change.¹³⁷

Kroeger expresses the belief that ‘society is deliberately perpetuating the disablement of many of its citizens’.¹³⁸ She debates the use of the word ‘deliberately’ by exploring its synonyms and antonyms arguing that the use of the term may seem harsh but what is the important point is that society as an external model has a role to play in the disablement of certain members.¹³⁹ She uses the analogy of students with disabilities moving into the ‘rooms of power [...]With the understanding, once inside, that we want to rearrange the furniture, move some walls, use captions, and electronic print,

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*

and generally move in as co-owners, rather than short-term tenants'.¹⁴⁰ This highlights the importance of ensuring that accessibility is developed so that it can be considered as a non-negotiable element of proactive critical citizenship, rather than a nice optional extra, as has been demonstrated in the substantive chapters of the thesis.¹⁴¹

Whilst Kroeger's points have value and demonstrate the difficulties facing students with disabilities succinctly, her use of language and some of her ideas express a continual problem in relation to discussions within society around disability rights. Firstly, she continues to ground her arguments within the concepts of morality and social justice. As has been discussed previously, these concepts create difficulty in terms of the advancement and realisation of disability rights because both constructs are reliant upon those implementing them having a certain sense of what is good, worthwhile or important and as every standard of behaviour is different it is difficult to make a cogent argument that these factors in themselves are sufficient and able to begin and continue to drive change.¹⁴²

Stanchi highlights the need to consider how students may be marginalized during assessment tasks such as legal writing and problem solving, if they internalise the concepts of facts that are relevant to juridical decision making do not take into account certain characteristics.¹⁴³ This can be said to be true for students with disabilities, if their experiences are not incorporated into the legal curriculum at all or in limited contexts. Stanchi argues that the incorporation of critical legal theory and making students aware of language bias, this she argues will assist in changes in attitude by

¹⁴⁰ *Ibid.*

¹⁴¹ UNGA, 'Implementation of the World Programme of Action concerning Disabled Persons and the United Nations Decade of Disabled Persons' ([A/RES/45/91](#)), UNGA, 'World Programme of Action concerning Disabled Persons' ([A/RES/37/52](#)) and UNGA, 'Implementation of the World Programme of Action concerning Disabled Persons' ([A/RES/37/53](#))

¹⁴² See Theory Chapter, 'Critical Pedagogy, Legal Education, Values and Rights.'

¹⁴³ K Stanchi, 'Resistance Is Futile: How Legal Writing Pedagogy Contributes to the Law's Marginalization of Outsider Voices' [1998] 103(1) Dickinson Law Review 51-57

encouraging students to see that language is not fixed but that meanings can be changed and remade.¹⁴⁴ She emphasizes the need for institutional changes in terms of staffing and approach to facilitate these changes in practice.¹⁴⁵ This thesis will build on similar arguments but extends the need to consider the needs of people with disabilities, throughout the liberal legal curriculum, and course content generally, rather than focusing on specific parts of the curriculum such as vocational skills, as emphasised in the American context.

Participation

The focus on participation within this thesis could potentially be seen as a weakness, because not all people with disabilities, nor the majority of the population, attend universities,¹⁴⁶ which could weaken the argument as to the transformative potential of higher education. However, the current focus on public engagement by higher education institutions within institutional practice and pedagogy addresses this issue. The National Coordinating Centre for Public Engagement (NCCPE)¹⁴⁷ provides a framework for universities to develop their own public engagement strategies. It defines the public as groups of individuals from various backgrounds, economic circumstances, genders and sexualities who share and differ in their interests and affiliations which shape their own identities and sense of agency.¹⁴⁸

Public engagement around disability must consider levels of shared knowledge and acceptance or rejection of the models of disability, as well as the effects of intersectional discrimination on other grounds in conjunction with disability to ensure

¹⁴⁴ *Ibid.* 55

¹⁴⁵ *Ibid.* 56-7

¹⁴⁶ As of 2016 43% of 17-60year olds were registered as full time students in Higher Education Courses at UK Higher Education Institutions and English, Welsh and Scottish Further Education Colleges. Department for Education, 'National Statistics Participation rates in higher education: 2006 to 2016 (Table C in Tables: SFR47/2017 Document)' (*gov.uk*, 28 September 2017) <<https://www.gov.uk/government/statistics/participation-rates-in-higher-education-2006-to-2016>> accessed 14 November 2017

¹⁴⁷ National Co-ordinating Centre for Public Engagement, 'What is public engagement?'

<<https://www.publicengagement.ac.uk/explore-it/what-public-engagement>> accessed 8 May 2017

¹⁴⁸ *Ibid.*

that it is meaningful and responsive to the needs of the audience. With regard to recruitment, care should be taken to ensure that engagement groups and audiences are not only recruited from established avenues, which are often dependent on previous involvement with NGOs or DPOs.¹⁴⁹ The centre guidance on holding events is responsive to various access needs and tailoring the event towards the audience expected.¹⁵⁰ This framework should provide a basis for ensuring participation in legal education and ensure that non-traditional attendees are able to access community events and widen dissemination of knowledge.

The centre highlights that public engagement has several social functions, such as dissemination of research, encouraging participation in research and inspiring the public.¹⁵¹ Public engagement formed part of the 2014 Research Excellence Framework (REF). The centre undertook a review of this and found that it has encouraged a view of Public Engagement as core business not just 'good intentions', and has given it a 'harder edge' in terms of its financial and strategic value to the institution and It has created more demand and interest from academics for help and support to develop good Public Engagement where many were previously unaware or uninterested. This has led to Public Engagement being effectively resourced and supported.¹⁵² However, Collini is critical of the notion of 'impact' over the notion of 'public engagement' which he differentiates as being the quantifying, or attempted quantifying, of public response to this engagement with research rather than communicating the purpose and benefit of the research to the wider community.¹⁵³ He argues that the process of quantifying

¹⁴⁹ See Limits of Involvement of People with Disabilities – Issues of NGOs and DPOs section in CRPD Chapter 132

¹⁵⁰ National Co-ordinating Centre for Public Engagement, 'Target Audience: Deepening your understanding'

<https://www.publicengagement.ac.uk/sites/default/files/publication/target_audience_deepening_our_understanding.pdf> accessed 8 May 2017

¹⁵¹ National Co-ordinating Centre for Public Engagement, 'Why Engage'

<<https://www.publicengagement.ac.uk/plan-it/why-engage>> accessed 8 May 2017

¹⁵² National Co-ordinating Centre for Public Engagement, 'REF 2014'

<<https://www.publicengagement.ac.uk/explore-it/what-are-policy-drivers/measuring-impact/ref-2014>> accessed 8 May 2017

¹⁵³ S Collini, *Speaking of Universities* (Verso 2017) 49-50

these responses takes up large amounts of academic labour in terms of gathering the correct resources necessary to satisfy the REF criteria which in turn makes the process very expensive to carry out.¹⁵⁴ He is critical of the idea that the response to the impact findings could have implications about the quality of the research and its suitability for receiving future public funding because this is an inappropriate way of gauging the quality of research because this can be very difficult to measure in a quantifiable way.¹⁵⁵ He expresses similar reservation about student feedback as being the deciding factor as to whether courses continue to run in the future because their skills as researchers are defined based on whether students like their courses and attain good marks and that their careers will become defined by a policy framework with narrow objectives which jeopardise the idea of the university.¹⁵⁶ In light of these criticisms it may be worth considering the introduction of disability related legal courses into the liberal, legal curriculum as a matter of public engagement rather than impact to ensure that connections with the wider community are not superseded and displaced by a bureaucratic exercise which could lead to disengagement.

The 'What Works?' Project highlighted important teaching and learning practices to encourage student engagement: student and staff contact, active learning, prompt feedback, high expectations, respect for diverse learning style and cooperation amongst students, the importance of learning in different settings and through social engagement.¹⁵⁷ In relation to integrating disability related discourse and proactive critical citizenship into the university curriculum beginning with the liberal legal curriculum at the undergraduate level it is important for students with disabilities to be able to fully access and participate in all areas of student life. The Report highlighted

¹⁵⁴ *Ibid.* 50

¹⁵⁵ *Ibid.* 50-59

¹⁵⁶ *Ibid.* 59-60

¹⁵⁷ L Thomas, 'Building student engagement and belonging in Higher Education at a time of change: final report from the What Works? Student Retention & Success programme' <file:///S:/Downloads/what_works_final_report.pdf> accessed 16 May 2017. 14

several practices to increase student belonging which could all be assisted by a greater understanding of the impact of disability and other protected characteristics from a rights-based approach within the curriculum. These include the creation of supportive peer relations which result in meaningful interactions at both staff and student level which assist in developing knowledge, confidence and identity as learners and experiences relevant to interests and future goals.¹⁵⁸ The importance of social integration as a catalyst for change is highlighted by the activist and co-founder of Tourettes Hero, Jess Thom, who believes that ‘every conversation [...] has the potential to create change.’¹⁵⁹ Thom recognises the relationship between the individual and the group in creating and sustaining social change by making reference to past social movements such as the Suffragettes and Anti-Apartheid lobbyists¹⁶⁰, because this supports and contextualises the concept of proactivism within that of activism, that change can be both individual and collective.

Though this project considered issues of physical access to be secondary due to its coverage in previous studies¹⁶¹, it cannot be discounted as an element of proactive critical citizenship within education. DisabledGo audits sites for accessibility through site visits and surveys by people with disabilities.¹⁶² They use a standard template to ensure reliable and user friendly information.¹⁶³ The company argue that this overcomes issues of venues self-reporting access because venues often ‘overlook or fail to appreciate reality of access’ and that the majority ‘do not have the expertise or the time to go into the detail that many disabled people need’ to ‘make an effective judgement about the suitability of access.’¹⁶⁴ DisabledGo offers the opportunity for

¹⁵⁸ *Ibid.* 14-15

¹⁵⁹ J Thom & M Pountney, 'About Tourettes Hero' <<http://www.touretteshero.com/about/>> accessed 24th March 2015

¹⁶⁰ *Ibid.*

¹⁶¹ T Tinklin, S Riddell, A Wilson, 'Disabled Students in Higher Education' [2004] CES Briefing No. 32 1 and O Konur, 'Teaching disabled students in higher education' [2006] Teaching in Higher Education 351-363

¹⁶² DisabledGo, 'About Us' <<http://www.disabledgo.com/about-us>> accessed 15 May 2017

¹⁶³ *Ibid.*

¹⁶⁴ *Ibid.*

people with disabilities to become involved in consultations about access to certain institutions or places¹⁶⁵ which could provide an avenue for student involvement and practical learning. In terms of education, they can give indications about the availability of large print, Braille, Hearing Loop availability, sign language use and the existence of disability awareness and equality training within the faculties.¹⁶⁶ They can assess the accessibility of accommodation, bathroom facilities, seating and communications with people at the venue such as through fax, telephone or email as well as mobility access such as automatic doors, ramps, slopes and manual door and the existence of handrails and interlevel changes and steps for mobility impaired walkers.¹⁶⁷ DisabledGo responded to a request as to the average cost for a full assessment of a university at around £10,000 - £30,000 + VAT in the first year and then £2,000 to £5,000 + VAT annually thereafter.¹⁶⁸ Whilst this may appear to be a large expenditure, the current changes in the provision and view of students as consumers rather than recipients in terms of higher education, with a greater focus on completion and retention, this expenditure may be rationalised as a means of increasing recruitment, completion and retention through greater understanding and provision of access. Accessibility information is publicly available via the DisabledGo website. This could encourage a sense of competition in terms of provision, between providers thus ensuring greater access for students and investments by institutions. However, a recent report found that despite the increase in university fees in recent years, student behaviour and attitudes towards university changed relatively little and the report did not expect the introduction of the TEF to alter student behaviour significantly either.¹⁶⁹ However, the same report did find that more needed to be done to integrate students with diverse

¹⁶⁵ DisabledGo, 'Our Work - How we do it' <<http://www.disabledgo.com/our-work>> accessed 15 May 2017

¹⁶⁶ DisabledGo, 'Access Icons' <<http://www.disabledgo.com/our-icons>> accessed 15 May 2017

¹⁶⁷ *Ibid.*

¹⁶⁸ Email correspondence with DisabledGo 26 April 2017 at enquiries@disabledgo.com DisabledGo, 'Our Work - How we do it' <<http://www.disabledgo.com/our-work>> accessed 15 May 2017

¹⁶⁹ Unite Students and HEPI, *Reality Check A report on university applicants' attitudes and perceptions Part of Unite Students' Insight Series 2017* (2017) 12-13

needs¹⁷⁰ such as those dealing with personal problems and navigating university life with disabilities. The central argument of this thesis has been that participation needs to be viewed as a number of intersecting levels within legislation, practice, law and legal education. Firstly, as Proactive Critical Citizenship. Secondly, as physical participation and finally, recognition through that participation.

Economics

The substantive chapters of this thesis have argued that the current approach to economics within the Disability rights framework has a detrimental effect on the implementation and realisation of the goals of the framework and that the focus needs to shift from justification to expectation. This section of the chapter will examine strategies and approaches that could be used to change the focus on economic factors to ameliorate some of the previously identified pressures in terms of resource allocation in order to be able to shift perspective from burden to the concept of 'assurance of rightful access.'¹⁷¹

These methods will be attractive to higher education providers in the face of potentially higher expenditure on access than previously experienced due to the changes in relation to DSA as discussed in the penultimate substantive chapter of this thesis. This thesis extends an idea considered during Masters research¹⁷² that a change in approach to financing disability access measures needs to occur from cost vs. benefit analysis to cost vs. loss of benefit analysis as advocated by Crespi.¹⁷³ He has argued that this has

¹⁷⁰ *Ibid.* 32-33

¹⁷¹ A Pearson 'A Comparative Study of 'Reasonable Adjustment' and 'Undue Burden' Provisions for People with Disabilities Accessing Public Transport Services under European Union Law.' Keele University September 2014 A.V. Pearson, 'What's worth got to do with it? Language and the socio-legal advancement of disability rights and equality' (2014) 20(3) Web JCLI. A.V Pearson, 'The debate about wheelchair spaces on buses goes 'round and round': access to public transport for people with disabilities as a human right'. (Spring 2018) 69(1) NILQ

¹⁷² *Ibid.*

¹⁷³ G S Crespi, 'Efficiency Rejected: Evaluating 'undue hardship' claims under the Americans with Disabilities Act' [1990] Tulsa Law Journal, 26(1), 21.

been underexplored in practice and that this is difficult to do due to several factors.¹⁷⁴ Firstly, those who benefit from reasonable adjustments are not only those with disabilities and that these are used by people with or without disabilities at various times, he takes the view that many people without disabilities may develop disabilities in the future meaning that they have to use them at a later point. Consequently for Crespi, this complicates the value equation in relation to reasonable adjustments because people within this group of users will place a different value on it and different parts at different times which he argues means that the willingness to pay analysis does not address the existence of irrationality in the behaviour of people using these adjustments.¹⁷⁵ Additionally, Gybels states that ‘many of the assumptions about the accessibility costs to the industry are not based necessarily on rational facts but on opinions.’¹⁷⁶ Furthermore, he argues that ‘the debate needs to be more rational’ to consider the ‘overall societal costs of exclusion as much as the cost of inclusion.’¹⁷⁷ These ideas could be applied to the education context and society in general because whilst society may feel economically richer if they do not pay for accommodations, they are likely to be socially poorer because they are hampering the development and potential of new expertise and perspectives of a large group by failing to provide access. Consequently, the cost vs benefit analysis becomes difficult to sustain. Varney has considered how such a reappraisal might work in practice in the context of ICT and accessibility.¹⁷⁸ She calls on regulators and service providers in the ICT sector to consider the needs of people with disabilities more positively. This argument can be applied in the context of access to higher education because the EQA institutes the Public Sector Equality Duty at Section 129. Furthermore, the CRPD requires that access for people with disabilities is anticipatory in Article 5 and that the absence of

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*

¹⁷⁶ Interview with Guido Gybels, RNID (now Action on Hearing Loss), 17 August 2009 in E Varney, ‘Disability and Information Technology: A Comparative Study in Media Regulation’ 2013 Cambridge University Press, 221.

¹⁷⁷ *Ibid.*

¹⁷⁸ E Varney, *Disability and Information Technology: A Comparative Study in Media Regulation* (Cambridge University Press, 2013) 221

reasonable adjustment should be considered as a form of discrimination under the same article. She draws on the ideas of Gybels, who argues for a toolkit of funding measures. The cost could be borne by the service providers in the same way as health and safety costs, which he argues are seen as ‘proportionate and not an ‘undue burden.’¹⁷⁹ Some elements of accessibility should be viewed as ‘just part of doing business.’¹⁸⁰ This is a feasible idea, as this perspective makes it difficult to dispute payments towards accessibility, by presenting them as non-negotiable rather than nice extras. Gybels argued that this could encourage competition to work above minimum levels which this thesis has argued could work in the context of education if accessibility was made valuable in academic league table rankings.¹⁸¹ However, there is a weakness in this argument because the discrete nature of health and safety compared with disability access provisions means that until society has a broad interactionist understanding of disability and the impact and purpose of the CRPD, then there is unlikely to be sufficient public support for access issues or condemnation of those failing to provide it to a level that would exert sufficient social pressure to persuade them to change their practices.

Another argument advanced by Gybels, which has previously been applied in the arena of transport,¹⁸² is that funds for accessibility could be raised from general taxation.¹⁸³ However, there are weaknesses in this argument, because the changes brought by HERA are motivated by a government desire to provide greater value for money both for students and the taxpayer as a whole, which is evident of a greater level of scrutiny and suggests that a proposition of raising funds through increased general taxation is unlikely to be popular.¹⁸⁴ Moreover, in the case of people with disabilities this does not

¹⁷⁹ Gybels n. 176

¹⁸⁰ *Ibid.*

¹⁸¹ See discussion of the potential impact of Higher Education and Research Act.

¹⁸² A Pearson ‘A Comparative Study of ‘Reasonable Adjustment’ and ‘Undue Burden’ Provisions for People with Disabilities Accessing Public Transport Services under European Union Law.’ Keele University September 2014 59

¹⁸³ Interview with Guido Gybels n. 176. 221.

¹⁸⁴ Higher Education and Research Act 2017 (HERA)

remove them from the position of having to justify their access to resources and leaves them in the role of grateful recipients from a benevolent society.¹⁸⁵ An alternative measure, previously advanced in the context of accessibility concerning public transport¹⁸⁶ is a system based on EU research and development tax incentives.¹⁸⁷ However, given the precarious relationship between the UK and the EU as a result of the Brexit vote and the uncertainty created by the forthcoming negotiations and the potential costs, it is uncertain as to whether this model could be applied to higher education. However, the premise of the model is that a tax reduction would be granted to institutions spending a significant proportion of their income on accessibility measures. Administratively, these schemes are attractive because compared to grants and loans; the size and scope of the exemption can be altered with few changes. Additionally, the running costs for an exemption scheme can remain unaltered.¹⁸⁸ Accelerated depreciation schemes for investments (machinery, equipment, buildings, intangibles),¹⁸⁹ could be used to answer the concerns relating to the cost of maintaining accessibility related equipment such as lifts, automatic ramps, specially built facilities such as bathrooms at stations. This measure may have the potential to accelerate repairs as companies will know that a portion of the costs could be reclaimed so financial concerns will be reduced. Special Research and Development allowances allow firms to deduct more than 100 per cent of their current eligible expenditure from their taxable income.¹⁹⁰ In terms of accessibility expenditure, this scheme is attractive to both parties and offers some of the advantages of Gybels' mainstreaming and integration argument, such as increased levels of innovation to maintain a sense of competition with competitors, which results in increased investment, but the tax

¹⁸⁵ *Ibid.*

¹⁸⁶ *Ibid.*

¹⁸⁷ A Trandafir and L Ristea, 'R&D Tax Relief in the European Union' [2014] *Economics, Management, and Financial Markets* 431.

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.* 433

¹⁹⁰ *Ibid.*

incentive means that this is not dependent on wider public understanding and support, as businesses will proactively lower tax burdens independently.¹⁹¹

A fourth proposition which has been applied to the context of transport and accessibility previously,¹⁹² is Gybels' idea of funding based on a 'trust' model where funds are raised for high profile causes attract donations.¹⁹³ However, it was previously stated that this was incompatible with the paradigm shift of the CRPD and retained people with disabilities in the position of recipients of charity.¹⁹⁴ Another model previously explored was Gybels' universal service model.¹⁹⁵ This is based on industry members comply with obligations to provide access and to share responsibility for funding them. Gybels argues that this model is the most restrictive because of the role of policy makers in drafting the obligations and assuring the compliance of service providers. He argues that instituting obligations will mean that there is no incentive for providers to improve beyond these. He advises that it is not only high profile causes that require attention and that an effective toolkit is needed to protect the rights of people with disabilities effectively.¹⁹⁶ In the higher education context, stakeholders would include research partnerships, for vocational and liberal degrees such as law academic and industry partners, National Association of Disability Practitioners (NADP), National Union of Disabled Students, individual university disability services teams, law schools and individual students. The hope would be that these groups of stakeholders could work together to create their own toolkit and that this would be supplemented by the inclusion of teaching in relation to the law and disability because it would give both students and university based stakeholders greater understanding of the issues facing students with disabilities in the wider context. Nussbaum offers the

¹⁹¹ Pearson n. 182. 61

¹⁹² *Ibid.* 62

¹⁹³ Interview with Guido Gybels n. 176.244

¹⁹⁴ Pearson n. 182. 62.

¹⁹⁵ Interview with Guido Gybels n. 176. 224

¹⁹⁶ *Ibid.*

capability approach¹⁹⁷ which focuses resource distribution on the idea that societies should look to remedy the deficit affecting people with disabilities by investing the necessary resources in overcoming those deficits and enabling people with disabilities to participate within society and have the ability to make claims on these resources as necessary. However, Silvers and Pickering Francis has criticised this approach because they argue it focuses on an idea of normalcy decided by people without disabilities and assumes a medical model understanding of disability that people wish to be cured or have their impairment removed by the application of aids or treatment provided that it is sufficiently funded by the state.¹⁹⁸ Nussbaum critiques Rawls' failure to consider the needs of people with disabilities and their potential need for differential expenditure in his first conception of social contract theory, by requiring them to meet the threshold of independence.¹⁹⁹ Like Sen, she argues that the capabilities approach has more to offer people with disabilities in terms of realising their rights by focusing on access to rights by providing accessible environments and education, as well as having access to funding.²⁰⁰ Nussbaum recognises commonality of experience between people with disabilities and those without, the continuum of disability,²⁰¹ the pervasiveness of dependence and disability,²⁰² the universality of care.²⁰³ However, Nussbaum differs from Sen²⁰⁴ in a number of ways which make her views on capabilities incompatible with the current thesis. Her insistence on maintaining a set list of capabilities, including voting and bearing children, even though this may not be possible, or desired regardless of disability status is problematic because it is exclusive.²⁰⁵ Her use of language and choice of emphasis on the animal or purely

¹⁹⁷ M Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Harvard University Press 2007)

¹⁹⁸ A Silvers and L Pickering Francis, 'Justice through Trust: Disability and the "Outlier Problem" in Social Contract Theory' [Symposium on Disability October 2005] 116(1)*Ethics* 55

¹⁹⁹ M Nussbaum, n.197. 109-114

²⁰⁰ *Ibid.* 167

²⁰¹ *Ibid.* 87-88.

²⁰² *Ibid.* 99, 125-126.

²⁰³ *Ibid.*, 218-220

²⁰⁴ A Sen, *The Idea of Justice* (Penguin Books 2010) 231-235

²⁰⁵ M Nussbaum, 'Capabilities as Fundamental Entitlements: Sen and Social Justice' [2003] 9:2(3) *Feminist Economics* 41-42

physical, rather than humanity is uncomfortably close to the Nazi concept of ‘useless eaters’²⁰⁶ in the sense that Nussbaum is unwilling to allow that it is possible for somebody with a severe mental impairment to live a ‘good life’ by her standards because they cannot partake in her predefined list of capabilities but that it is possible for them to enjoy aspects of life if viewed differently from the Kantian perception of dignity.²⁰⁷ Moreover, her references to ‘the good’²⁰⁸ is incompatible with the present thesis due to its rejection of morality as a foundational precept for recognising and instituting the rights of people with disabilities, arguing that this should be based on their recognition as human beings rather than a moralistic crusade on the part of benevolent societies. Additionally, she makes repeated references to otherness around disability ‘people with severe mental impairments, like other human beings, [...]’,²⁰⁹ ‘we say of some conditions of a being, let us say a permanent vegetative state of a (former) human being, that this just is not a human life at all, in any meaningful way, because possibilities of thought, perception, attachment and so on are irrevocably cut off’,²¹⁰ ‘species membership’²¹¹ and references to chimpanzees²¹² and that people with certain types of impairment remind us of the ‘complex cognitive abilities of animals.’²¹³ This is rightly refuted by Kittay who has a daughter with both physical and cognitive impairments and argues that Nussbaum’s approach is impossible to sustain because it holds people with such an impairments to the normative standards of those without which means that the joy and value in their lives cannot be recognised as a result.²¹⁴ In response, Kittay argues that the starting point for the consideration of disability

²⁰⁶ M Mostert, 'Useless Eaters: Disability as Genocidal Marker in Nazi Germany' [2002] 36(3) *The Journal of Special Education* 159

²⁰⁷ Nussbaum, n.205, 159-160

²⁰⁸ See for example Nussbaum, n.205 163, 181

²⁰⁹ *Ibid.* 169

²¹⁰ *Ibid.* 181

²¹¹ *Ibid.* 192

²¹² *Ibid.*

²¹³ *Ibid.*

²¹⁴ EF Kittay, Equality, Dignity and Disability. in MA Lyons and F Waldron (eds), *Perspectives on Equality: The Second Seamus Heaney Lectures* (The Liffey Press 2005) 108-109

decisions is to remember that we are all ‘a mother’s child’.²¹⁵ Whilst this is clearly an emotional statement from Kittay, this thesis supports and applies its basic premise to arguments about the status of people with disabilities in terms of both access and resource allocation, that people with disabilities are people first and foremost. Consequently, decisions should be grounded in commonality, rather than difference, but this should not be used as justification but inspiration. People making these decisions should be encouraged to think about the impact on them if they could not access society today, rather than thinking that equal access will help them tomorrow. This will help to move people with disabilities from being the other or former citizens, who had full rights and then lost them due to circumstance or misfortune. Additionally, this may remove the notion of unreasonableness around disability access claims, as implied by legislative thresholds of ‘reasonable adjustments’ and ‘undue burden.’²¹⁶ Barclay criticises Nussbaum’s inability to express equality of status through the language of capabilities,²¹⁷ arguing that there are few noticeable areas that capabilities approach addresses that nuanced approaches to human rights do not.²¹⁸ Moreover, she is rightly critical of Nussbaum’s potential presentation of equality as a capability, as this could mean that there is a choice about whether or not people are treated as equals and are regarded by society.²¹⁹ In the context of the legislative history of disability and dignity, which will be explored in the substantive chapters of this thesis, this is dangerous. Barclay argues that the language of human rights bridges the gap between the individualistic concepts of capabilities and the state by enabling individuals to engage in a dialogue with governments to ensure that their status is respected.²²⁰ This thesis argues that it is necessary to utilize the emblematic concepts of foundational

²¹⁵ *Ibid.* 113-114

²¹⁶ See ‘Economics’ in substantive chapters

²¹⁷ L Barclay, ‘The Importance of Equal Respect: What the Capabilities Approach Can and Should Learn from Human Rights Law’ [2014] 64(2) *Political Studies* 385

²¹⁸ *Ibid.* 386-387

²¹⁹ *Ibid.* 398

²²⁰ *Ibid.* 399

human rights such as dignity and participation and their recognition potential for enforcement through human rights law monitoring exercises at the supranational level and incorporation into domestic legislation, through no discrimination law to produce the society that Richardson argues is key to producing a society that recognises equal respect or the lack of it and its potential negative effects of this;²²¹ and the capabilities and functioning approaches in order challenge the current resourcist approach to funding 'reasonable adjustments' for people with disabilities to propose a more inclusive alternative.

In response to these concerns this thesis will argue that the concept of reasonable adjustment should be challenged to shift focus to the concept of 'Assurance of Rightful Access',²²² which will be explored in the Solutions chapter of the thesis.²²³ The thesis criticises Nussbaum's call for a neo Aristolian, rather than Kantian approach to dignity in relation to capabilities.²²⁴ This thesis has recognised that there are difficulties in applying a Kantian approach to dignity,²²⁵ but that these cannot be overcome by Aristotle's formal, rather substantive view of equality.²²⁶ Furthermore, Nussbaum maintains a focus on the physical attractiveness of people with disabilities as a justification of seeing them as equals in terms of rights, 'Sasha [...] attractive and affectionate[...] Arthur a big good-looking ten year old[...]'.²²⁷ This has uncomfortable echoes of the classical approach to disability and citizenship rights.²²⁸ Nussbaum also refers to the need for children with disabilities to be subjected to medical intervention

²²¹ HS Richardson, 'Some Limitations of Nussbaum's Capabilities' [2000] 19(309) QLR 323-324

²²² Pearson n. 171

²²³ See Solutions Chapter 'Economics'

²²⁴ Nussbaum n.205, 216-221

²²⁵ See Kantian discussion of Dignity in Literature Review, 35-36

²²⁶ See Formal v. Substantive equality discussion, Literature Review, 32

²²⁷ Nussbaum n.205, 96.

²²⁸ See Quarmby discussion of disability in Literature Review 'Disability', 19.

to reach a minimum level of capability²²⁹, mirroring the medical model approach, that citizenship is achieved by modifying people with disabilities.

Pogge is critical of both Sen and Nussbaum's argument for the capability approach because he believes that neither is able to provide a sufficient criterion of application to make it work in practice or acceptable to the public.²³⁰ He praises Nussbaum for engaging with the development of a criteria of valuable capabilities and is critical of Sen's failure to do so.²³¹ Moreover, he argues that neither sufficiently examines resourcist views with enough nuance to produce an argument that the capabilities approach is superior to the resourcist view overall.²³² Pogge is critical of the Rawlsian approach on the same grounds.²³³ Conversely, Anderson²³⁴ and Terzi²³⁵ argue that the capability approach because it is an objective metric which can satisfy societies' need for a criterion of justice, which can sensitively account for variations in functioning and respond to the existence of discrimination against 'the disabled'.²³⁶ Anderson is also critical of Pogge's argument that that the needs of people with disabilities can be met with a standardised bundle of resources and the need for an unbiased approach to resource provision.²³⁷ It is arguable, that reasonable adjustment and undue burden mirror this approach. However, this thesis is strongly averse to Pogge's argument that the 'the resourcist approach has a more attractive way of accommodating special needs than capability theorists do.'²³⁸ At first it appears as though Pogge's proposition is

²²⁹ Nussbaum n.205, 97, 189

²³⁰ T Pogge, A Critique of the Capability Approach. in H Brighouse and I Roebyns (eds), *Measuring Justice* (Cambridge University Press 2010) 17

²³¹ *Ibid.* 50-51

²³² *Ibid.* 18-19

²³³ *Ibid.* 19

²³⁴ E Anderson, Justifying the capabilities approach to justice. in H Brighouse and I Roebyns (eds), *Measuring Justice* (Cambridge University Press 2010) 81

²³⁵ L Terzi, What metric for justice for disabled people? Capability and disability. in H Brighouse and I Roebyns (eds), *Measuring Justice* (Cambridge University Press 2010) 151

²³⁶ See Anderson n.234

²³⁷ *Ibid.* 91-2

²³⁸ Pogge n.230 31

positive because it appears to mirror a social model understanding of disability by recognising that, [...] our shared institutional order is not affording you genuinely equal treatment. To make up for the ways that we are treating you worse than others we propose to treat you better than them in some other respects.²³⁹ Pogge then lists examples of the forms that this 'better' treatment may take, such as the provision of free guide dogs or ensuring audio as well as visual road signals.²⁴⁰ He highlights that the resourcists approach will not totally equalise the experience of moving around society as those without disabilities.²⁴¹ This thesis takes issue with the notion that people with disabilities are being afforded 'better' treatment than those without by being able to access society, rather it argues that they are being granted the ability to access their rights as fellow citizens, with contributions to offer to society. However, this thesis does agree with the element of a resourcist view that Pogge highlights, 'that there are no duties of justice to alleviate [...]'²⁴² because this is demonstrative of the charity approach to disability, rather than a human rights approach which emphasises the commonality of dignity and worth of people with disabilities who have an equal claim to others to access and advocate for their rights, which emphasises the importance of people with disabilities being able to understand and fight for their rights, with assistance where necessary, rather than waiting for societies moral conscience to be pricked,²⁴³ in order to have their rights recognised. Kelly²⁴⁴ argues that there is little difference between the capability approach and the primary goods approach in relation to providing different access to resources where necessary for people with disabilities, but that the primary goods approach allows individual strengths and talents to have an impact on what can be achieved over time and that these are likely to result in inequality.²⁴⁵ This highlights a principal problem with the

²³⁹ *Ibid.* 31

²⁴⁰ *Ibid.*

²⁴¹ *Ibid.*

²⁴² *Ibid.* 31-32

²⁴³ *Ibid.* 32

²⁴⁴ E Kelly, Equal opportunity, unequal capability. in H Brighthouse and I Roebyns (eds), *Measuring Justice* (Cambridge University Press 2010)

²⁴⁵ *Ibid.* 78

attitude of the resourcist approach to disability, that people with disabilities place all of their difference to people without disabilities as a result of their disability. Or, that by implication, people with disabilities are not possessed of any innate or singular talents which may make them more talented and productive in a particular area than a person without a disability and would entitle them to a greater portion of resources as a result, meaning that they would understand inequality based on talents and aptitudes, but not inequalities in societal structure preventing them from maximising or showcasing these talents for their benefit or the benefit of others. This demonstrates the need to emphasise the commonality, rather than difference between people with disabilities and those without though discussion of the human rights framework concerning disability in the context of undergraduate liberal legal education to highlight the totality of experience of people with disabilities to strengthen the understanding of their claims as rights holders. Another weakness in Kelly's argument, which this thesis hopes that 'Assurance of Rightful Access' will help to overcome is her attempts to create a hierarchy of disability and the status that this might afford in society, such as arguing that, 'Persons in wheelchairs or who have a chronic disease[...] may be capable of participating fully in a social scheme of cooperation, provided that they are access to additional resources. This gives us reasons to classify the moderately disabled amongst the normal.'²⁴⁶ It is important to highlight and challenge the continuing existence of these arguments with students and their potentially corrosive effects to progress and not to think that they are confined to history, with the first rights centred declarations of the 1970s²⁴⁷ and the different levels of protection they provided depending on impairment. The concept of 'Assurance of Rightful Access' proposed in this thesis supports her focus on the importance of functioning and the ability of members of society to appear within that society 'without shame.'²⁴⁸ Her approach also

²⁴⁶ *Ibid.* 66

²⁴⁷ For example Declaration on the Rights of Mentally Retarded Persons 1971 and Declaration on the Rights of Disabled Persons 1975

²⁴⁸ Anderson n.234 81

has the possibility of development for people with disabilities both in terms of choices but also the ability to change those choices over time in response to changes in available resources and opportunities,²⁴⁹ which removes the notion of people with disabilities as a static and grateful group within society. Moreover, Anderson's approach has strengths over those of Sen and Nussbaum, because she recognises that economic inequality is not the only issue to participation for people with disabilities, but that issues such as patronising social attitudes present barriers outside of economics.²⁵⁰ Moreover, she roots her discussion in the concept people having claims to the resources necessary to enable them to function in society as equals.²⁵¹ Furthermore, this thesis follows Anderson's response to resourcists questions about the point at which expenditure for an individual becomes unreasonable. She argues that 'futile expenditures'²⁵² are not required by the capabilities approach and nor does it require such a level of expenditure to the point of providing the necessary levels of resources that is so particular that it would not be possible to provide the same resources for another citizen with the same level of need.²⁵³ This dovetails with the concept of 'Assurance of Rightful Access'²⁵⁴ in two principle ways. Firstly, it would not support futile expenditures in the sense that it would not expect states or institutions to pay for initiatives or adaptations which would not materially advance the rights of people with disabilities or do not take into account the needs or wishes of people with disabilities. Secondly, Anderson's emphasis that it is not necessary to pay for excessive support which cannot be replicated for other citizens with the same level of need, because it understands that people with disabilities as members of societies who are not solely defined by their disability, would have no desire to deprive others' in society

²⁴⁹ *Ibid.* 84-5

²⁵⁰ *Ibid.* 89 also see Terzi n 235. 165

²⁵¹ Anderson n.234 91

²⁵² *Ibid.* 97

²⁵³ *Ibid.* 97

²⁵⁴ A.V Pearson, 'What's worth got to do with it? Language and the socio-legal advancement of disability rights and equality', (2014) 20(3) Web JCLI and A.V Pearson, 'The debate about wheelchair spaces on buses goes 'round and round': access to public transport for people with disabilities as a human right'. (Spring 2018) 69(1) NILQ

of funding which they might need to assure access on other grounds, that could assist them also. However, there are elements of Anderson's arguments that must be handled with care, such as who makes the decision of what is a futile expenditure and for whom, as the previous approach to education for people with disabilities at the domestic level, which enabled authorities and medical professionals to unilaterally designate certain people with certain impairments as 'ineducable'²⁵⁵ with reference to a standardised framework, demonstrate how such a focus can limit rather than advance rights. Moreover, Anderson's use of terminology such as 'the disabled'²⁵⁶ is problematic because it presents people with disabilities as an amorphous, static and dehumanised group, as shown by the lack of reference to people, the determiner and the past participle, which highlights the need to review these linguistic conventions with students to demonstrate the impressions they create and the dialogue they continue regardless of the overall thrust of the arguments presented.

Consequently, this thesis argues that whilst the capability approach offers a significant step forward in the approach to providing the necessary funding access to rights for people with disabilities the concept of the 'Assurance of Rightful Access' will not adhere to it in its entirety because there are issues inherent within it, which are incompatible with the rights centred focus of the human rights approach to disability and that these rights are granted by virtue of shared dignity, rather than a benevolent society, which appears particularly apparent in the concept that the capabilities approach exists to compensate the losers in 'nature's lottery'.²⁵⁷ This has problematic echoes of the classical approaches to disability, as a stain or misfortune, rather than an element of human diversity. It is also important to remember and emphasise that from an interactionist approach to disability, people with disabilities will not always view

²⁵⁵See The 1944 Education Act discussion in Chapter 5

²⁵⁶ Anderson n. 234 81

²⁵⁷ J Rawls, *A Theory of Justice* (Oxford University Press 1971) 64

themselves as being disadvantaged compared to those without disabilities and would want to have their talents in certain areas recognised and celebrated.

The discussion of capabilities and resourcism in relation to the concepts of reasonable adjustment and the proposal for the concept of the 'Assurance of Rightful Access'²⁵⁸ as a replacement should be viewed as an academic rather than practical discussion. As stated at the outset, this thesis is not concerned with the relationship between welfare and disability because there has been ample research in this area previously and it is felt that maintaining this focus would continue rather than challenge stereotypes in the context of legal education, which this thesis argues is important to address the low levels of legal consciousness around disability rights and to advance them in practice. Consequently, this thesis will engage with the broad elements of debate, as might be presented to students in a newly imagined liberal legal curriculum, which incorporate disability discourse to consider how the limitations posed by reasonable adjustment and undue burden within the human rights framework concerning disability could potentially be overcome by critiquing and reformulating the concept going forward. Without a strong grounding in economic theory it is felt that the mathematical interrogation of these ideas and their potential application in practice is best left to a future researcher with the skills necessary to explore these ideas.

Burchardt²⁵⁹ argues that the capabilities approach is compatible with the aims of the social model of disability because they share a number of common themes: the relationship between social barriers and individual limitations, the importance of autonomy and the value of freedom, and dissatisfaction with income as a measure of

²⁵⁸ A.V Pearson, 'The debate about wheelchair spaces on buses goes 'round and round': access to public transport for people with disabilities as a human right'. (Spring 2018) 69(1) NILQ, A.V Pearson, 'What's worth got to do with it? Language and the socio-legal advancement of disability rights and equality', (2014) 20(3) Web JCLI

²⁵⁹ T Burchardt, 'Capabilities and disability: the capabilities framework and the social model of disability' [2004] 19(17) Disability & Society

well-being.²⁶⁰ She argues that its acceptance is hampered by a lack of ‘real life’ applications.²⁶¹ She criticises Nussbaum’s creation of the separate list of capabilities as potential dangerous route to take for some people with disabilities, because it sets a threshold for a ‘good life’.²⁶² However, she fails to critique other elements of Nussbaum’s arguments such as the language she uses to refer to people with disabilities. However, strengths of Burchardt’s approach is the recognition of the possibility for the individual and the need for individuals to become liberated to push for change.²⁶³ Ultimately, she argues that the linking the capability approach to the social model of disability has the potential to alter the way that society and policy makers consider allocating resources to people with disabilities to ensure they can access society.²⁶⁴ However, whilst this thesis will incorporate Burchardt’s argument for the transformative effects of the capabilities approach in addressing issues of resource allocations for people with disabilities it argued that she fails to address key weakness. The capability approach has the potential to transform the current understanding of resource allocation in relation to disability from one of reasonable adjustment to the ‘Assurance of Rightful Access’ and the role that legal education might play as a testing ground in theory and in practice and to facilitate social inclusion and participation. Sen²⁶⁵ highlights a way in which the theory of Adam Smith and Capabilities can be used to maintain the utility of the perspective of capabilities in resource allocation as focusing on outcome rather than process by arguing that in addition to physical elements, capabilities can relate to social relationships between members of communities and levels of esteem. For example, Smith argues that in the realms of work the material differences between people with various occupations are not what

²⁶⁰ *Ibid.* 735

²⁶¹ *Ibid.* 736

²⁶² *Ibid.* 744

²⁶³ *Ibid.* 744-746

²⁶⁴ *Ibid.* 748-9

²⁶⁵ A Sen, *The Idea of Justice* (Penguin Books 2010) 255-256

matters.²⁶⁶ Rather, it is the respect that each member draws from performing a certain function via their occupation to the community.²⁶⁷ Whilst the concept of occupations bringing respect may be difficult to apply in relation to disability because not every person with a disability may be able to undertake what is traditionally considered an occupation and earn a wage, this notion of respect can be transferred to the concept of participation as defined in the human rights approach. This would then include those who can contribute to their communities in a variety of ways which are not traditionally recognised as employment but are still valuable which would mean that the capability approach to resource allocation would apply to them by virtue of this respect and this would be in line with the human rights framework. With regard to the checks, weights and balances that Sen and Nussbaum argue are important to have in place to ensure that the community feels that resource allocation is sustainable, viable and just, framing ‘Assurance of Rightful Access’ within the notion of rights encompasses automatic limitations on positive rights such as the rights of others to interfere with other members in the community means that these checks and balances are automatically in place without the need for an artificial threshold that other members of society are not subject to.

There are grassroots changes that could be made at institutional levels to shift the focus from resource allocation to effectiveness. Lee Owen,²⁶⁸ a community development officer for the NHS within Staffordshire developed ‘The Box of Trix’ to enable people with disabilities to make use of readily available assistive technology items.²⁶⁹ The focus was on readily available items that could be purchased at minimal cost, from easily

²⁶⁶ A Smith, *An Inquiry into the Nature and Causes of The Wealth of Nations* (The Electric Book Company Ltd London 1998) < <file:///S:/Downloads/Smith%20Adam-The%20Wealth%20of%20Nations.pdf> > accessed 1st September 2017. 151-152

²⁶⁷ *Ibid.* 150-152

²⁶⁸ IEWM, 'Lee's Box of Trix - Everyday Gadgets - Get Connected' <https://www.youtube.com/watch?v=noSLzV_FAjs> accessed 2 May 2017

²⁶⁹ Staffordshire and Stoke Partnership Trust, ‘Box of Trix achieving results’ [2016] 401 (9 December) The Word 3.

accessible sources to assist people with disabilities in everyday life.²⁷⁰ Owen highlights the importance of collaboration with people with disabilities and their representative organisations to test products and make people aware of their availability.²⁷¹ The same approach should be applied to bringing the system into the higher education context. Leaflets or website links could be given out to students at Open days and orientation events to give them time to familiarise themselves with the concepts and to be able to purchase any items they felt useful before commencing their course. Moreover, the information could be presented in such a way as to mainstream the accessibility experience into student life and potentially help to remove any sense of stigma or discomfort that students with disabilities might feel about needing to use assistive technology amongst their peers. The name 'Box of Trix' is not disability specific and not medicalised so it may help students without disabilities to recognise that they too might find certain pieces of equipment useful and make their learning experience more accessible as a result and consequently mainstream an understanding of accessibility into their experience. This approach is positive because it encourages both institutions and individuals to be creative in the provision of access for students. This may release them from the constraints of traditional narratives around disability and cost as demonstrated in the substantive chapters of this thesis because the most effective provisions may be the least costly. Additionally, by removing the layers of bureaucracy the expected complexity of solutions may be reduced. Moreover, it gives greater control to the individual with a disability rather than funding bodies and assessors because these types of adaptations and pieces of equipment are widely available.

However, there are potential negatives to the system. It may create a disparity of provisions between students with more funds than others or those with greater

²⁷⁰ *Ibid.*

²⁷¹ Leek Post and Times, 'Advice on dementia aid is being offered by the Park Medical Patient Participation Group in Leek'
<<http://www.leek-news.co.uk/advice-dementia-aids-latest-information-offered/story-29177683-detail/story.html>> accessed 2 May 2017

familiarity of the formalised systems of assessment and provision of support which could consequently lead to a disparity of experience. There is the potential that placing the onus on students to source and test out their own aids places an additional role onto their shoulders which does not exist for their counterparts without disabilities and could distract their attention away from the student experience and consequently make either their impairment or disability more of an issue. Conversely, there is the possibility that the Box of Trix would assist those students who do not engage with student support services or more formalised means to their detriment because they do not feel comfortable disclosing their disability status²⁷² due to the fear of stigma from others or difficulty in accepting it themselves. Negative aspects of the Box of Trix approach could be negated if disability support services, advisors or administrators could collate a basic Box of commonly used items such as coloured overlays, coloured papers, ergonomic pens, dictaphones, apps and software and independent living equipment to be used in a residential setting or fieldwork situations. This could then be built upon by collaborative work with students and support workers via email or online suggestion box to maintain the relevance and utility of products.

This element of collaboration could include academics and their course design by encouraging them to use the Box of Trix to assist them with design and delivery. This could be incorporated within staff development and staff should be encouraged to take pride and ownership in their own Boxes of Trix as something which could help their career development in the future through increased student participation and learning.

The Potential and Limits of Legislation to Produce Change

The Higher Education and Research Act (HERA) alters the funding of both universities and research councils for the first time since the Higher Education Act

²⁷² T Tinklin, S Riddell and A Wilson, 'Disabled Students in Higher Education' [2004] CES Briefing No. 32

1992 and places students in the role of consumers.²⁷³ This is achieved by the development of the Teaching Excellence Framework (TEF) and the ability to open and close both public and private institutions based on their performance in both the TEF and the REF to cap or uncap the fees they can charge accordingly.²⁷⁴ This has the potential to empower students with disabilities to demand greater levels of accessibility that are no longer restricted by a socially determined level of reasonableness by those without disabilities, because if this were to continue, students with disabilities would simply ‘shop around’ institutions to find the one that is most accessible and this would create a sense of competition between institutions to attract greater numbers of students. Moreover, supplementary legislation, as discussed in previous chapters of this thesis, like the CRPD and the EQA, would require institutions to consider and mainstream elements of accessibility from the beginning of the process, meaning that the change of access to a commodity rather than a gift has the potential to be straightforward. This offers the opportunity to challenge Zola and Stone’s²⁷⁵ findings of the minority rights approach where people with disabilities are engaged in an argument with those without disabilities to be granted access to the resources they need. This has the potential to challenge the traditional notions of reasonable adjustment and undue burden in relation to the implementation of access measures for students with disabilities. It is arguable that with subtle changes it could present the opportunity to replace these concepts with the concept of ‘Assurance of Rightful Access’²⁷⁶ in the context of higher education, which could then be widened into other areas. Molesworth et al argue that the creation of reflective students within certain contexts may be problematic giving the examples of marketing, PR, media production and leisure management stating that their critical abilities would limit their ability to do

²⁷³ HERA 2017. Part 1 s.9(3)

²⁷⁴ Political Studies Association, 'Teaching Excellence Framework (TEF)' <<https://www.psa.ac.uk/sites/default/files/TEF%20Bulletin.pdf>> accessed 23 May 2017

²⁷⁵ See D Stone, *The Disabled State* (1st edn, Temple University Press 1986) 188-189 and I Zola, 'Toward the Necessary Universalizing of a Disability Policy' [2005] 83(5) *The Milbank Quarterly* 19-20

²⁷⁶ Pearson n. 171. 55

jobs without angst about their value or the purpose of the commodities that their salaries allow them to buy which may lead them to reject certain social norms, which a society dependent on these may be unwilling to pay for.²⁷⁷ It is important to consider the role of education as a key to socialisation into existing cultural norms, rather than always being a source of innovation and critique without question. Ultimately, they argue that staff and student must work together to critically reflect on the changes in higher education and the value in maintaining it as a personal transformation to resist market pressures by vocalising and theorising their concerns to resist the consumerist discourse in higher education. Conversely, Bunce et al argue that there is limited evidence as to a change in student attitudes to that of consumers and that what evidence there is largely anecdotal, but that there does appear to be a correlation with the changes in behaviour and the expectations of certain disciplines.²⁷⁸ Despite these concerns, it is arguable in the case of students with disabilities and in terms of disability within educational discourses generally, that this recognition as consumers may empower students with disabilities to state and advocate for their needs. At the same time, this could animate discussions around their experiences which could be broadened out to affect change in the wider society at a critical level. By creating the notion of consumer around disability, it could draw the attention of service or education providers to the needs of people with disabilities as a business strategy rather than a social justice endeavour which would create a level of expectation to be maintained rather than a sense of gratitude amongst students with disabilities, thus equalising their relationship with others in terms of resource allocation.

However, it should not automatically be assumed that HERA will address the needs of people with disabilities because there is evidence of other under-represented groups

²⁷⁷ M Molesworth and others, 'Having, being and higher education: the marketisation of the university and the transformation of the student into consumer' [2009] 14(3) *Teaching in Higher Education* 285

²⁷⁸ L Bunce and others, 'The student-as-consumer approach in higher education and its effects on academic performance' [2016] *Studies in Higher Education* <DOI: 10.1080/03075079.2015.1127908> accessed 30 May 2017. 3

being prioritised over those with disabilities. The data monitoring element of HERA only requires that statistics are collected on the basis of ethnicity, gender and socio-economic background but no other characteristics are included.²⁷⁹ Written evidence on the Act provided by the Equality and Human Rights Commission²⁸⁰ highlighted that this approach was inconsistent with the government demonstrating its commitment to ensure access to education for people with disabilities under Article 24 CRPD and its wider duty to collect and share data to demonstrate their fulfilment of these obligations. The Commission highlighted that they could not see a rationale behind the exclusion of data collection and publication in relation to other protected characteristics and found the Committee's response that any such data would need to be digestible by students to be unpersuasive. This shows a failure to understand that students with disabilities may find such data helpful in giving them an idea of the level of access and attitude at an institution to assist them in their decision making. Written evidence submitted by the Open University highlights and questions the lack of discussion of disability and other characteristics within the Act over and above issues such as gender, socio-economic background and ethnicity and how restricting attention to these areas only has the potential to restrict social change.²⁸¹

Kent Union highlighted the lack of student voice amongst those with disabilities.²⁸² Bournemouth University discussed the possibility of transfer to other universities where a course or programme is at risk of being closed at the original institution, the evidence cautions against this citing the social damage that is likely to be caused to the

²⁷⁹ HERA 2017 n. 275

²⁸⁰ Equality and Human Rights Commission, 'Higher Education and Research Bill, House of Lords, Committee Stage - Advice for Parliamentarians on Amendments to Clause 9 and Clause 31' (Monday 9 January 2017). 2 and 5.

²⁸¹ Parliament, 'Higher Education and Research Bill Written evidence submitted by the Open University (OU) (HERB 13)' <<https://www.publications.parliament.uk/pa/cm201617/cmpublic/HigherEducationandResearch/memo/HERB13.htm>> accessed 12 May 2017

²⁸² Parliament, 'Higher Education and Research Bill Written evidence submitted by Kent Union (HERB 55)' <<https://www.publications.parliament.uk/pa/cm201617/cmpublic/HigherEducationandResearch/memo/HERB55.htm>> accessed 12 May 2017

students based on an understanding of why students choose to study at a particular university. In relation to disability, this raises the question of whether a case could be made in the future that if an institution were unable to provide adequate disability support for students, there may be a possibility for them to be encouraged to transfer to another university, particularly in the light of changes to external supports such as DSA which means that universities are now expected to fund most of disability related expenditure themselves. Moreover, the fact that disability is so absent from the Act means that there is a lack of internal protection should this become the case at a later date.²⁸³ UNISON evidence makes specific reference to the impact of funding removal on people with disabilities in terms of accessing education and makes the case for disability access to be viewed in the same way as BME participation.²⁸⁴ It discusses how the marketisation of Higher Education in the UK has the potential to damage its international reputation and lead to a decline in the interest of social justice and that this is likely to decrease by people from non-traditional backgrounds. It focuses heavily on the public interest role of universities to research socially valuable areas. It highlights the problems of debt amongst students and implications of fee rises.²⁸⁵

That the Act came into force in 2017,²⁸⁶ arguably at the height of recent developments within the human rights framework relating to disability, as explored in the substantive chapters of this thesis, and yet those drafting the act failed to take into account the needs of students with disabilities, despite the centrality of education in achieving the

²⁸³ Parliament, 'Higher Education and Research Bill Written evidence submitted by Bournemouth University (HERB 03)'

<<https://www.publications.parliament.uk/pa/cm201617/cmpublic/HigherEducationandResearch/memo/HERB03.htm>> accessed 12 May 2017

²⁸⁴ Parliament, 'Higher Education and Research Bill Written evidence submitted by UNISON (HERB 34)'

<<https://www.publications.parliament.uk/pa/cm201617/cmpublic/HigherEducationandResearch/memo/HERB34.htm>> accessed 12 May 2017

²⁸⁵ *Ibid.*

²⁸⁶ Parliament, 'Higher Education and Research Act 2017'

<<http://services.parliament.uk/bills/2016-17/highereducationandresearch.html>> accessed 12 May 2017

goals of the human rights framework relating to disability demonstrates the failure and weaknesses within the framework as highlighted by the House of Lords Report.²⁸⁷

Conclusion

This chapter has considered how to respond to the weaknesses identified in the previous substantive chapters to build the argument for the inclusion of disability rights discourse into the liberal, legal curriculum and how this may be achieved. A primary issue was participation as this is the practical encapsulation and recognition of the dignity and autonomy of people with disabilities. This is important in presenting a means of increasing the awareness of people with disabilities and the wider society about the rights of people with disabilities and how these should be realised in practice to achieve the aims of the human rights framework. Consequently, this chapter considered the most appropriate methods and approach to incorporating rights-based discussions around disability into the liberal, legal curriculum which could provide a template for the inclusion of other rights-based discussions moving forward. The chapter considered the potential use of flipped classroom models based on recent developments in course provision at University Northampton Waterside Campus,²⁸⁸ although literature expressed concerns about these models in comparison with traditional approaches due to additional expenditure and time commitments for staff members.²⁸⁹ However, literature highlighted that provided the institutional policies and support are in place, staff show support for these approaches as part of training and professional development.²⁹⁰ Copyright was another significant issue that raised concerns. Whilst there are problems with the abolition of copyright in academic contexts as espoused by some American writers²⁹¹, there is argument to be made for

²⁸⁷ Higher Education and Research Bill Written evidence submitted by the Open University (OU) n. 240.

²⁸⁸ E Palmer, S Lomer and I Bashliyska n. 43

²⁸⁹ Dempster n. 21

²⁹⁰ *Ibid.*

²⁹¹ Rahmatian n.25 and Shavell n.31.

the value of sharing of resources between universities such as the Leeds University Disability Archive UK²⁹² to advance Disability rights in society and make courses more competitive by offering a broader range of subjects. It is argued that these new approaches to teaching and course design, with a focus on universal design principals, has the potential to mitigate some of the concerns expressed about the changes to funding for access and support for students with disabilities by making information available in varied and recorded formats from the outset.²⁹³ Participation was considered in relation to impact within the wider community. Though this and exercises such as the TEF and the REF have been criticised for their bureaucratic nature and expense of implementation.²⁹⁴ The chapter considered the potential impact of the HERA to increase accessibility for students with disabilities to higher education and its potential to facilitate a shift in focus around resource allocation from the current concept of 'reasonable adjustment' to 'Assurance of Rightful Access.' It proposed that viewing students with disabilities as consumers with an element of choice could engender this change by making access a site for competition between institutions in terms of recruitment rather than as a bureaucratic afterthought. However, the fact that disability is not included in the data collection for the Act was argued to be demonstrative of the failure of the government to communicate the links between disability rights and education to the wider society, thus weakening the effectiveness of the human rights framework. The following chapter will draw together the arguments from across the substantive analysis and the solutions presented in this thesis and assess the contributions, limitations and possible extension of the work going forward.

²⁹² University of Leeds, 'The Disability Archive UK' (2017) <<http://disability-studies.leeds.ac.uk/library/>> accessed 10 July 2017

²⁹³ Jisc n. 115 and Karnad n. 57 and Zhu n. 58.

²⁹⁴ Collini n. 153.

Chapter 7: Conclusion

This thesis sought to explore the potential role of liberal legal education and the university as sites for increasing consciousness of the rights of people with disabilities. Evidence shows that this is lacking. Consequently, it posed the following research questions: What is the relationship between the human rights of people with disabilities, the law and legislative practice and society, how is this relationship constructed and monitored, why is it important that there is a relationship and how would this work in practice. Moreover, there is support from within the Disabled People's Movement to incorporate disability perspectives and research into liberal curriculum as a matter of course rather than in specialist course with a medical slant. Regarding legal education, there is a growing literature around including disability awareness into practical training, but there is no discussion as to how this would happen in the English context and take no account of the disparity in numbers of people studying law and those entering practice, which has the potential to raise awareness in several areas. Moreover, the thesis sought to analyse and highlight the central role of education within the Human Rights framework concerning disability, both in terms of education about disability in the form of awareness raising, and education as a signal about the development of the dignity, autonomy and participation of people with disabilities within society as rights holders with ability to critique the delivery of those rights by the social systems such as law. The analysis of the CRPD, highlighted the lack of academic critique of the utility and genesis of the ideas from sources such as NGOs and DPOs, which are presented as representative of certain minority groups with little consideration of limiting factors such as access, confidence and familiarity required to enable people to engage with these organisations. Furthermore, the project highlighted the increased importance of critique and awareness of the rights of people with disabilities, by people with disabilities in the face of the changes brought about by Brexit and the potential effects on domestic law, to

ensure that grounds of rights protection is gained, maintained and certainly not lost. Accordingly, the project has advocated for a critical theory approach to law, disability and education to develop the relationship between these concepts and the theory of Proactive Critical Citizenship which builds upon the development of citizenship for people with disabilities as a gift from an enlightened society to a right that belongs to all and is subject to ownership and critique which should be the case for all rights for all groups.

It was necessary to consider how this could be achieved in practice by focusing on flipping traditional teaching models from large scale to a mixture of large and small-scale teaching to facilitate Freire's critical approach to teaching and awareness of power relationships within education. This sharpened the economic focus on cost benefit rather than cost vs. loss of benefit¹ analysis which mirrored the focus of the human rights framework and concepts of reasonable adjustments and undue burden. As a result, the project explored and extended the concept of the 'Assurance of Rightful Access' as a means of shifting the resource allocation to that of effectiveness in overcoming disadvantage as argued by the domestic disability framework. It was argued the development of the HERA² might produce the change of perspective in education necessary to shift economic focus in practice to utility. However, the lack of acknowledgement of the needs of people with disabilities in the final document demonstrate the importance of the central argument of this thesis that the educative element of the Human Rights framework concerning disability at all levels is failing to produce the legal consciousness and impetus for change necessary to advance the protection and enjoyment of the rights of people with disabilities in practice, not just in legislative and social policy texts.

¹ Crespi G S, 'Efficiency Rejected: Evaluating 'undue hardship' claims under the Americans with Disabilities Act' [1990] *Tulsa Law Journal*, 26(1)

² Higher Education Research Act 2017

Avenues For Future Work

The next stage of development for the research project would be to try to implement the proposed empirical study discussed in the introduction as a standalone project. This would require an application for external funding. This would facilitate the testing of the claims made in this thesis and assess whether or not the study of Disability law is deemed to be necessary by law students with disabilities and to explore the reasons as to why this may or may not be the case. Additionally, this could provide an insight into the receptiveness of disability rights and legal education at the academic stage. In turn this could provide greater context to other works in the literature surrounding the barriers facing people with disabilities when accessing vocational legal services such as that by Flynn and Lewis.³ It may reveal attitudes towards disability at the academic stage which may influence the response at the vocational stage either negatively or positively. As the Solicitors Qualifying Examination looks to standardise the content of traineeship across institutions⁴ and reports such as those by the Baring Foundation⁵ are indicating that people with disabilities and their organisations face difficulties accessing legal services, then the chance to embrace a change in approach and to link the academic and vocational stages in practice and potentially address the issues that people with disabilities face when accessing legal services makes projects and ideas like those explored in this thesis timely.

Another area of future work inspired by this thesis would be to consider how to develop a toolkit to make research done outside of specialist organisations concerning disability or research not directly connected to disability more accessible and more

³ E Flynn, *Disabled justice?* (Ashgate, Farnham 2015) 128-140, O Lewis, 'The Expressive, Educational and Proactive Roles of Human Rights: An Analysis of the United Nations Convention on the Rights of People with disabilities.' in B McSherry and P Weller (eds), *Rethinking Rights-Based Mental Health Laws* (Oxford: Hart Publishing 2010)

⁴ Solicitors Regulation Authority, *A new route to qualification: the Solicitors Qualifying Examination A Consultation Summary* (SRA October 2016) 5

⁵ Dr L Vanhala, 'The Baring Foundation: Working Paper No 2 on Better Use of the Law by the Voluntary Sector: Framework for Better Use of the Law by the Voluntary Sector' (August 2016) <<http://baringfoundation.org.uk/wp-content/uploads/2016/07/Framework-for-better-use-of-law-WPaper2-1.pdf>> (Accessed 16 June 2017), 2.

attractive for people with disabilities to take part in to assist with overall representation in a variety of areas and fields.

Reflection on the Findings, Contribution and Limitations of this research

Like any research, this project is not free of limitations. The first being its political context as it was written at a time of political and social flux in relation to disability. Examples of this include the beginning of the Brexit negotiations which are unlikely to be completed for many years to come, the change of the Higher Education settlement brought about by the enactment of the Higher Education and Research Act and what this might mean in terms of funding. In terms of direct consequences for students, changes to government provisions in terms of Disabled Students Allowance are not sufficiently established to enable the research or those evaluating it to make any real comment as to the long-term effects of these changes. In terms of the rights of people with disabilities in society generally within England, welfare reforms enacted by the Conservative government are still in progress and look to be for some time.

The critical discourse analysis of the documents across the international, supranational and national human rights framework in relation to disability in the substantive chapter of this thesis has demonstrated that education is a central tenant of its outcomes and dissemination. It has highlighted that the focus of both the legislature and people with disabilities, their organisations and social initiatives have been focused on inculcating an understanding of this at either elementary level education or through secondary social education such as inclusive employment campaigns. These include: the Paralympics, UN Year and Decade of People with disabilities rather than ensuring that individuals with disabilities were aware of their rights as individual citizens. This lack of awareness was demonstrated by the House of Lords evidence on the Equality Act review 2016 and the findings of NGOs and DPOs such as Leonard Cheshire discussed

in the Introduction.⁶ From a theoretical standpoint the research has argued that Critical Education Pedagogy offers the most appropriate way of inculcating this discourse into the undergraduate liberal legal curriculum in England because it offers solutions or ameliorates against the shortcomings of other approaches such as Foucauldian discourses of power.⁷ Whilst these argue that resistance can become a form of power, they ground a person within their body thus making it difficult for them to challenge external discourse. The top-down structure of these arguments means that it can be difficult for people to gain power in a practical sense. Moreover, Critical Pedagogy cautions against the oppressed becoming oppressors because of conscientisation and consequently offers a response to the dominance within movement such as the Disabled Peoples Movement and Disability Studies in the current narratives around disability and offers a safeguard against the continuation of this in the future.⁸

In terms of contribution to the field and existing literature, this project has extended and critiqued existing literature in relation to access to justice and surface consideration of liberal legal education for people with disabilities, as explored by Lewis and Flynn in the British contexts.⁹ It has considered the American approach to the creation and value of critical disability legal studies as well as building on work from the Israeli and European contexts.¹⁰ It has suggested a practical means of achieving and remedying the issues highlighted in previous research and the integration of disability discourses into the liberal legal classroom. Secondly, in terms of original contribution to the

⁶ See Leonard Cheshire, 'Rights and reality Disabled people's experiences of accessing goods and services Executive Summary' (*Leonardcheshire.org*, 2010) <<https://www.leonardcheshire.org/sites/default/files/Rights%20and%20reality%20-%20executive%20summary.pdf>> accessed 22 May 2017 and Select Committee on the Equality Act 2010 and Disability Oral and Written Evidence HL (24 March 2016)

⁷ See Foucault discussion p. 75

⁸ P Freire, *Pedagogy of the Oppressed* (3rd edn, Continuum 2005)

⁹ E Flynn, *Disabled justice?* (Ashgate, Farnham 2015) 128-140, O Lewis, The Expressive, Educational and Proactive Roles of Human Rights: An Analysis of the United Nations Convention on the Rights of Persons with Disabilities. in B McSherry and P Weller (eds), *Rethinking Rights-Based Mental Health Laws* (Oxford: Hart Publishing 2010)

¹⁰ S Linton, *Claiming Disability: Knowledge and Identity* (New York University Press 1998) and S Mor, 'Imagining the Law - The Construction of Disability in the Domains of Rights and Welfare: The Case of Israeli Disability Policy' (J.S.D. Thesis, NYU School of Law November 2005)

knowledge, it has examined the rhetoric and reality between the political and activist discourses about education both for people with disabilities and about the rights of people with disabilities in wider society. It has considered how to bridge the gap between legislative intent, the social niceties of morality and social justice, by considering how these translate from rhetoric into practice. It has offered a critique of the colonisation of disability discourse by the Disabled Peoples Movement, NGOs, DPOs and Disability Studies academics and questioned how this may in some cases halt as well as progress the rights of people with disabilities and some of the motivations behind that. Lastly, the research highlights the problems of maintaining the current economic perspective on the rights of people with disabilities. In response to the implicit weaknesses and limitations in the concepts of reasonable adjustment and undue burden in driving change in practice beyond a certain point it argues that these concepts should be replaced with the notion of the 'Assurance of Rightful Access'. By maintaining the established concept of what is rightful, it is argued that this new approach could be economically conscious without being restrictive for people with disabilities because the concepts of qualified and absolute rights means that the needs of all members of communities need to be balanced and so unsustainable expenditure on individuals could not be expected.

Appendix

Dear [Head of School],

My name is Abigail Pearson and I am a PhD candidate at Keele University, School of Law. As the basis of my thesis, I am examining the experiences of undergraduate law students with disabilities at 15 English institutions. I am writing to ask whether you would give your permission for me to contact the staff and students in your department as participants in my research.

Aims of the research:

The purpose of the study is to explore the experiences of people with disabilities accessing undergraduate legal education in England to identify any possible barriers they may experience. These barriers could be in any area such as teaching, physical access, social and attitudinal access, access to curriculum and weaknesses in the legal framework surrounding the provision of university education to people with disabilities. It is hoped that this study will reveal two things. Firstly, if any disability specific barriers to accessing legal education exist, and how these could be removed or lessened. Secondly, the reasons why students with disabilities choose to study Law and the possible effects of this choice.

Research Design:

Staff

Subject to your agreement, Staff will be invited to complete a secure online survey. This will ask questions about their role within the department, teaching commitments, disability status, educational experience and the disability awareness of their subject. The responses to these questionnaires will be used as context for student responses and also as potential indicators of avenues for reform.

Students

Subject to your agreement, initial contact will be made with students via a secure online survey. This survey will ask them to self-identify as having a disability or impairment. If students do not identify as having a disability or impairment they will not be able to complete the rest of the questionnaire. This will ask questions about their elective subjects, disability status, accommodation, support received and year of study. They will also be asked if they would be willing to participate in a semi-structured interview at a later date to expand on some of these responses and explore other areas. These interviews will take place at the university during term time though not in the department and will be arranged between myself and the students.

If you are willing for me to approach staff and students in your department, please reply to this email within four weeks and I will respond with the links to the necessary questionnaires and the information sheets. I have also attached an information pack to this email for your further information.

If you have any queries which are not answered by the attached document, please feel free to contact me at a.v.pearson@keele.ac.uk.

Many thanks for taking the time to read this information,

Kind regards,

Abigail Pearson

Dear Faculty Member,

My name is Abigail Pearson and I am a PhD candidate at Keele University, School of Law. As the basis of my thesis I am examining the experiences of undergraduate law students with disabilities at 15 English institutions. I am writing to ask whether you would be willing to share your experiences and take part in my research.

Aims of the research:

The purpose of the study is to explore the experiences of people with disabilities accessing undergraduate legal education in England, to identify any possible barriers they may experience. These barriers could be in any area such as teaching, physical access, social and attitudinal access, access to curriculum and weaknesses in the legal framework surrounding the provision of university education to people with disabilities. It is hoped that this study will reveal two things. Firstly, if any disability specific barriers to accessing legal education exist, and how these could be removed or lessened. Secondly, the reasons why students with disabilities choose to study Law and the possible effects of this choice.

If you would be willing to take part, please read the information pack attached to this email. If you wish to complete the questionnaire, please click the hyperlink below and you will be redirected to the online survey provider. [INSERT HYPERLINK subject to ethics approval]

If you have any queries which are not answered by the attached document, please feel free to contact me at a.v.pearson@keele.ac.uk.

Many thanks for taking the time to read this information,

Kind regards,

Abigail Pearson

Dear Student,

My name is Abigail Pearson and I am a PhD candidate at Keele University, School of Law. As the basis of my thesis I am examining the experiences of undergraduate law students with disabilities at 4 English institutions. I am writing to ask whether you would be willing to share your experiences and take part in my research.

Aims of the research:

The purpose of the study is to explore the experiences of people with disabilities accessing undergraduate legal education in England to identify any possible barriers they may experience. These barriers could be in any area such as teaching, physical access, social and attitudinal access, access to curriculum and weaknesses in the legal framework surrounding the provision of university education to people with disabilities. It is hoped that this study will reveal two things. Firstly, if any disability specific barriers to accessing legal education exist, and how these could be removed or lessened. Secondly, the reasons why students with disabilities choose to study Law and the possible effects of this choice.

If you would be willing to take part, please read the information pack attached to this email. If you wish to complete the questionnaire, please click the hyperlink below and you will be redirected to the online survey provider.

If you have any queries which are not answered by the attached document, please feel free to contact me at a.v.pearson@keele.ac.uk.

Many thanks for taking the time to read this information,

Kind regards,

Abigail Pearson



Keele University

A case study of the accessibility of undergraduate legal education in England for people with disabilities from the perspective of both students with disabilities and teaching staff

Why have you been chosen to take part:

You have been approached to form part of my research case study because you are a member of teaching staff at a law school in an English university.

What will happen:

You are invited to answer a questionnaire about your teaching and the content of your syllabus in relation to disability. You will also be asked about your own disability status and experiences of legal education. If you wish to take part you should click on the hyperlink in the email sent to you. This will direct you to the online survey provider. You will then be asked to confirm that you have read and understood this information sheet. If you require any clarification of the information here you should contact me at a.v.pearson@keele.ac.uk before attempting to answer the questionnaire. You will be asked to give your consent to take part. You will also be asked to give consent for use of quotes. If you click yes for consent it is assumed that your consent has been given and you should be aware that it will not be possible to remove your answers from the data set once the questionnaire has been started and individual answers recorded. If

you do not consent to take part you will be directed to an end screen and no information will be collected from you. After you have completed the questionnaire, your involvement with the project will cease.

What are the benefits or disadvantages of taking part:

I cannot promise that there will be any direct benefits to you from taking part in this study. In terms of risk or disadvantages if you choose to discuss a specific or unusual experience which may make it possible for others to identify you, you should be aware of any possible issues in terms of relationships, work, reputation that may arise. However, it is hoped that the information and insight that is gathered will provide some indication of where reform is needed and the pattern that any reform might take by highlighting discrepancies in current legislation. It may also show the connection that people with disabilities feel between the law surrounding disability and its possibility as an instrument for change.

What are the procedures for ensuring confidentiality and anonymity:

The questionnaire will ask you for no personal information. It will however ask for the institution that you work in, your position and an indication of how long you have worked there as well as the subjects you teach. However, this will not be used in the publication of the thesis. For example, in writing up you may be referred to as a mid-career academic teaching crime.

The data that you give me will be securely stored and not visible to the company providing the online survey services. However, to ensure proper data management and security the following people in my research team may access the data should the need

arise. My supervisors would be able to access the data only to ensure its proper destruction should something happen that meant the project could not be completed, such as my withdrawal from studies.

My support worker will have supervised access to the data as the need arises so that they are able to assist me in the management, storage, annotation and scribing of data findings.

I will have unrestricted access to all data given though this will only occur in secure surroundings on Keele campus and all data will be securely stored on password protected devices.

For more information see the links below:

SmartSurvey (online survey provider)

<https://www.smartsurvey.co.uk/security>

<https://www.smartsurvey.co.uk/privacy-policy>

Keele University

<http://www.keele.ac.uk/researchsupport/researchgovernance/dataprotection/>

What will the findings be used for:

The research findings will be used as evidence in my PhD thesis and will also form the basis of other publications such as Journal articles and Conference papers.

What if there is a problem:

If you have any issues or queries that you would like to explore please contact me directly in the first instance. If I do not provide an adequate solution please contact either my supervisor, or for formal complaints Nicola Leighton.

Abigail Victoria Pearson (Research student), a.v.pearson@keele.ac.uk

Dr Eliza Varney (Supervisor), e.varney@keele.ac.uk

Nicola Leighton (Research Governance Officer),

IC2, Keele University, Keele, ST5 5NH, 01782 733306, n.leighton@keele.ac.uk



Keele University

A case study of the accessibility of undergraduate legal education in England for people with disabilities from the perspective of both students with disabilities and teaching staff

Why have you been chosen to take part:

You have been approached to form part of my research case study because you are an undergraduate student at a law school in an English university.

What will happen:

You are invited to answer a questionnaire about your experience of higher education and the content of your undergraduate syllabus in relation to disability. You will also be asked about your own disability status and wider experiences at university. If you wish to take part you should click on the hyperlink in the email sent to you. This will direct you to the online survey provider. You will then be asked to confirm that you have read and understood this information sheet. If you require any clarification of the information here you should contact me at a.v.pearson@keele.ac.uk before attempting to answer the questionnaire. You will be asked to give your consent to take part. You will also be asked to give consent for use of quotes. . If you do not consent to take part, you will be directed to an end screen and no information will be collected from you. If you click yes for consent it is assumed that your consent has been given and

you should be aware that it will not be possible to remove your answers from the data set once the questionnaire has been started and individual answers recorded. Towards the end of the questionnaire, you will be asked if you would be willing to be interviewed to explore your experiences in greater depth. If you are not willing to be interviewed, your involvement with the project will cease after you have completed the questionnaire.

If you are willing to be interviewed you should provide you most frequently used email address and an indication of your support needs, if any, so that I can contact you to arrange the time and location of your interview and arrange any support you might need.

What are the benefits or disadvantages of taking part:

I cannot promise that there will be any direct benefits to you from taking part in this study. In terms of risk or disadvantages if you choose to discuss a specific or unusual experience which may make it possible for others to identify you, you should be aware of any possible issues in terms of relationships, work, reputation that may arise. However, it is hoped that the information and insight that is gathered will provide some indication of where reform is needed and the pattern that any reform might take by highlighting discrepancies in current legislation. It may also show the connection that people with disabilities feel between the law surrounding disability and its possibility as an instrument for change.

What are the procedures for ensuring confidentiality and anonymity:

The questionnaire will ask you for no personal information. It will however ask for the institution that you attend, your year of study, electives, disability status. However, this will not be used in the publication of the thesis. For example, in writing up you may

be referred to as a second year student studying international law and commercial property.

Duty to disclose:

Generally, the content you say in the interviews will remain confidential between you and me and certain members of the research team outlined above. However, in limited circumstances, eg if you were to disclose criminal activity or abuse, I am under an obligation to inform the relevant authorities to fulfil my duty of care towards you and not collude in criminal activity

The data that you give me will be securely stored and not visible to the company providing the online survey services. However, to ensure proper data management and security the following people in my research team may access the data should the need arise. My supervisors would be able to access the data only to ensure its proper destruction should something happen that meant the project could not be completed, such as my withdrawal from studies.

My support worker will have supervised access to the data as the need arises so that they are able to assist me in the management, storage, annotation and scribing of data findings.

I will have unrestricted access to all data given though this will only occur in secure surroundings on Keele campus and all data will be securely stored on password protected devices.

For more information see the links below:

SmartSurvey (online survey provider)

<https://www.smartsurvey.co.uk/security>

<https://www.smartsurvey.co.uk/privacy-policy>

Keele University

<http://www.keele.ac.uk/researchsupport/researchgovernance/dataprotection/>

What will the findings be used for:

The research findings will be used as evidence in my PhD thesis and will also form the basis of other publications such as Journal articles and Conference papers.

What if there is a problem:

If you have any issues or queries that you would like to explore please contact me directly in the first instance. If I do not provide an adequate solution please contact either my supervisor, or for formal complaints Nicola Leighton.

Abigail Victoria Pearson (Research student)

a.v.pearson@keele.ac.uk

Dr Eliza Varney (Supervisor)

e.varney@keele.ac.uk

Nicola Leighton (Research Governance Officer)

IC2, Keele University, Keele, ST5 5NH

01782 733306

n.leighton@keele.ac.uk



Keele University

A case study of the accessibility of undergraduate legal education in England for people with disabilities from the perspective of both students with disabilities and teaching staff.

If you choose to participate in an oral interview:

1. You should aim to arrive at the venue at least 15 minutes before the interview so that you can complete the necessary consent documents, ask questions and have any support needed put in place. If you have indicated that you will require a BSL or SSE interpreter, please ensure that you arrive in good time so that you can be introduced to the interpreter before the interview begins and that you can both familiarise yourselves with the interview room.
2. If you wish to have an interpreter present at your interview you may request that a video recording is made. This will enable the researcher to observe your physical and facial gestures to ensure that your tone is expressed rather than that of the interpreter. If you choose to have your interview recorded on video, your privacy will be maintained as the audio will be separated from the visual recording and transcribed separately so that only the voices of those in the room are heard.

3. If you choose to make use of video recording as well as voice recording, the camera will only record you and without sound so that only your physical and facial gestures are apparent. The sound recording will be analysed separately. The only person who will see the video recording is the researcher. The video recording will not form any part of the published work or subsequent publications or presentations and will be destroyed after the thesis is completed.
4. If necessary, a qualified interpreter will be provided by the researcher and the related costs of outside service providers will be paid by the researcher.
5. It is planned that the interviews will be around 45 minutes long, though if your additional needs mean that you require a longer time, this has been factored in to the planning of the day. You should also be aware that you can ask for the interview to be paused to give you a break if necessary and I will leave the room during any such breaks.
6. When the interview is over and the recording is stopped, there will be no opportunity for you to change any responses given or to see a transcript of the interview.
7. After the interview, you will have no further direct involvement in the project, but you will still be able to contact the researcher via email if you have any issues regarding the interview that you would like to discuss.

8. You may withdraw consent to participate at any time before the tape recorder is switched off. Once this happens it will not be possible to withdraw consent.

9. The interview will be semi-structured. There will be areas of interest that will be outlined on the interview guide the participant receives via email after completing the questionnaire and again in a hard copy before the interview begins. This interview is your chance to talk about your experiences and to direct the researcher to areas that are of particular importance or significance. The researcher will only ask more direct questions to elicit further information on a particular aspect where required.

If you choose to participate in a written interview:

1. You should aim to arrive at the venue at least 15 minutes before the interview so that you can complete the necessary consent documents and ask questions and have any support needed put in place. If you have indicated that you will require a written interview, please ensure that you arrive in good time so that you can set up a laptop or meet your scribe if needed, and familiarise yourself with the interview room.

2. It is planned that the interviews will be around 45 minutes long though if your additional needs mean that you require a longer or shorter time, this has been factored in to the planning of the day. You should also be aware that you can ask for the interview to be paused to give you a break if necessary, and I will leave the room during any such breaks.

3. After the interview is complete and you have saved your work, there will be no opportunity for you to change any responses given or to see a copy of what you have written.
4. The interview will be semi-structured. There will be areas of interest that will be outlined on the interview guide the participant receives via email after completing the questionnaire and again in a hard copy before the interview begins. This interview is your chance to talk about their experiences and to direct the researcher to areas that are of particular importance or significance.

What will happen to your data?

The data that you give me will be securely stored and not visible to the company providing the online survey services. However, to ensure proper data management and security the following people in my research team may access the data should the need arise. My supervisors would be able to access the data only to ensure its proper destruction should something happen that meant the project could not be completed, such as my withdrawal from studies.

My support worker will have supervised access to the data as the need arises so that they are able to assist me in the management, storage, annotation and scribing of data findings.

I will have unrestricted access to all data given though this will only occur in secure surroundings on Keele campus and all data will be securely stored on password protected devices.

Due to the time it would take me to type up the interviews, the researcher will be paying to have them transcribed. The person the researcher has chosen is an experienced administrator for the health service and as such is used to handling confidential information and is well versed in the storing and preservation of data. Moreover, it has the

advantage that as she is a local person, CDs will be able to be hand delivered and collected from her in person, so the researcher will not have to rely on post or internet services. As for the types transcripts, the researcher will ask her to save them directly on to a password protected memory stick. These will then be transferred onto the researcher's office computer at Keele University and the memory stick locked away with the original CDs. The researcher will also ask Keele IT services to set up password controlled folders on their computer.

Video files will not be transcribed or seen by the researcher's support worker, as the researcher will watch these alone and record anything the researcher wishes to analyse in conjunction with the transcript as verbal notes to themselves on a dictaphone which the researcher's support worker will then write up.

In the case of written interviews, these will be saved from the laptop provided onto the secure memory stick and will only be seen by the researcher and those assisting with physical analysis and typing up the researcher's dictation about the transcripts.

If you choose a hand written interview, your script will be stored in a ring binder and locked in a suitcase at all times whilst at the interview venue and when being transported back to Keele. Back at Keele they will be stored in a locked filing cabinet or cupboard in my office which will also be locked. Copies will be made to preserve original transcripts during analysis, my support worker will remain in the photocopy room throughout this process and the original will be locked away immediately after. Any copies and the originals will be shredded and disposed of in confidential waste bins on completion of the thesis

You may withdraw consent to participate at any time before the Written interviews, manual or electronic have been handed to me or saved onto the memory stick. Once this happens it will not be possible to withdraw consent.

Duty to disclose:

Generally, the content you say in the interviews will remain confidential between you and me and certain members of the research team outlined above. However, in limited circumstances, eg if you were to disclose criminal activity or abuse, I am under an obligation to inform the relevant authorities to fulfil my duty of care towards you and not collude in criminal activity.

Please complete the slip below if you still consent to participate in the interview:

(Tick to agree)

I give my consent to be interviewed

I give my consent for quotes and paraphrases to be used in the completed thesis and future publications

I give my consent for an **Interpreter/Support worker/ scribe** to assist me during my interview

Signed:

Date:

Please indicate if a proxy signature is used. A preferred mark can be used in place of a proxy signature if you prefer

Support Worker Details:

Role: _____ **Relationship** to
participant: _____

Confidentiality agreement:

I understand that anything I may hear, interpret or scribe during the interview is confidential and should not be disclosed to any third party, unless required by law.

Signed:

Date:

A case study of the accessibility of undergraduate legal education in England for people with disabilities from the perspective of both students with disabilities and teaching staff

1. Consent

It is up to you to decide whether to take part in the case study. Please make sure that you have read and understood the information sheet attached to the invitation to complete this questionnaire before attempting to answer any of the questions. Once you have indicated your consent below it will not be possible for you to withdraw your responses to any submitted questions as these cannot be isolated and removed.

1. Have you read and understood the information sheet attached to the invitation to complete this questionnaire? *

Yes

No

2. Do you give your consent for your anonymised responses to this questionnaire to be included in the final project and subsequent publications?

Yes

No

2. About you

3. Which university do you currently work in? (This information will not be published) *

4. Please state your role in the law school.

**5. How long have you been employed at your current university as an academic?
(This information will be published as Early Career, Mid Career or Late Career.)**

Less than 1 year

1-2 years

2-5 years

5-10 years

More than 10 years

'How long have you been working as an academic?'

Less than 1 year

1-2 years

2-5 years

5-10 years

More than 10 years

6. Which subjects do you teach most frequently? *

Subject 1

*

Subject 2

Subject 3

Subject 4

7. Are these subjects core subjects or elective subjects?

	Core	Elective
Subject 1	<input type="checkbox"/>	<input type="checkbox"/>
Subject 2	<input type="checkbox"/>	<input type="checkbox"/>
Subject 3	<input type="checkbox"/>	<input type="checkbox"/>
Subject 4	<input type="checkbox"/>	<input type="checkbox"/>

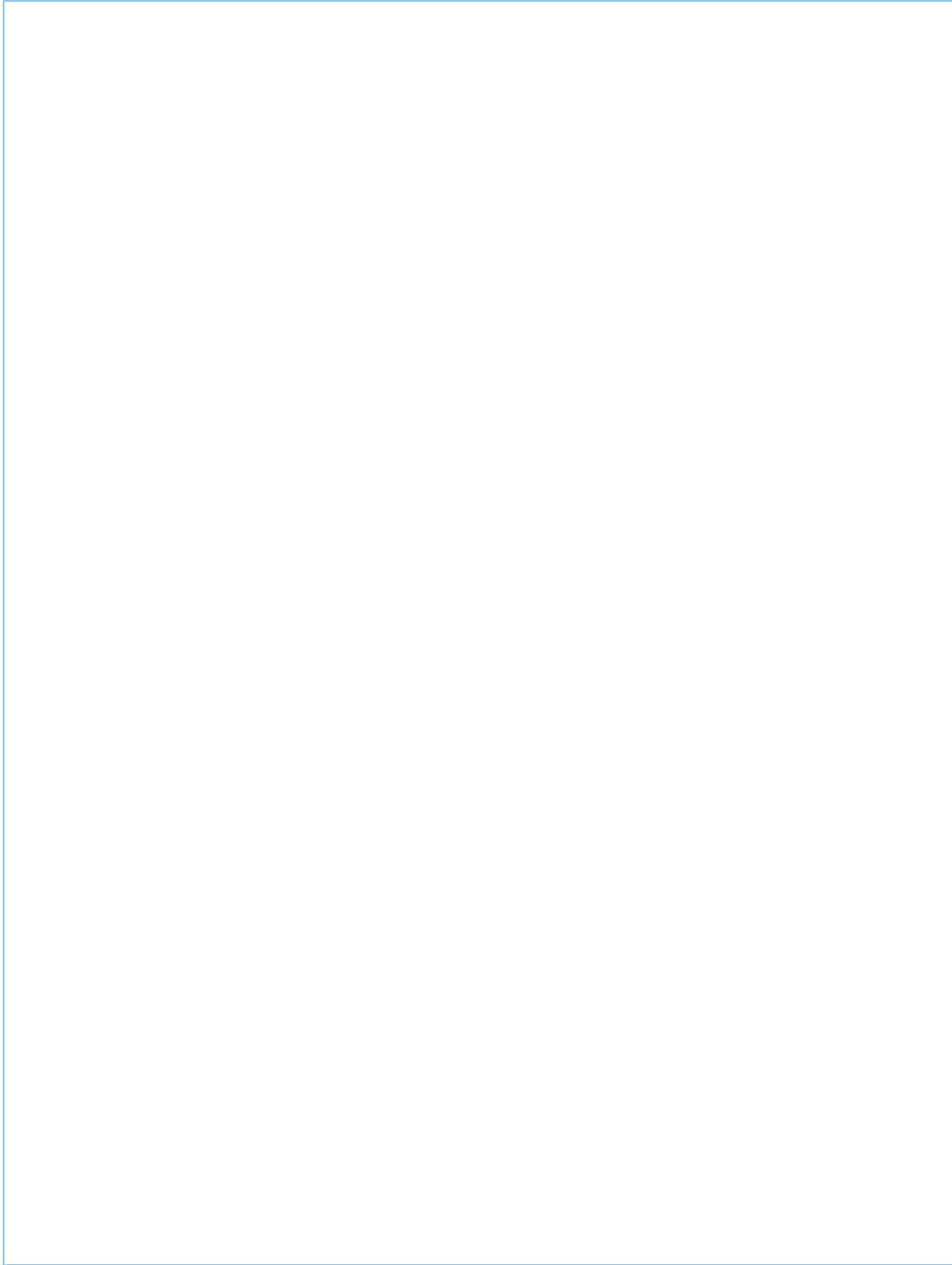
8. Do you consider the content of your syllabus to be disability aware? e.g. Does it include cases or examples where a person with a disability has been or may be effected by an issue covered in your subject area, are disability rights considered in the context of your teaching either by students or yourself in the classroom setting. *

Yes

No

3. How do you think this could be improved?

9. Please state what improvements you feel could be made to make your syllabus content more disability aware. *



4. Examples

10. Please indicate cases (including citation or party names if possible) or examples you use in teaching which involve people with disability or disability issues (also please include details as to which part of the course these occur e.g. tutorial or exam questions or in lectures) *

5. Your disability status

11. Do you consider yourself to have an impairment or disability? *

Yes

No

12. From the options below, please select the option(s) that best describe your impairment.

Sensory

Communication difficulties

Mobility

Mental Health

Diabetes or other ongoing health issue

Aspergers

Non-specified learning difficulty

Specified learning difficulty

Autistic Spectrum Disorder

Dyslexia

Epilepsy

Other (please specify):

13. Do you consider yourself to be disabled? (Do you experience difficulties in accessing society due to your impairment?) *

Yes

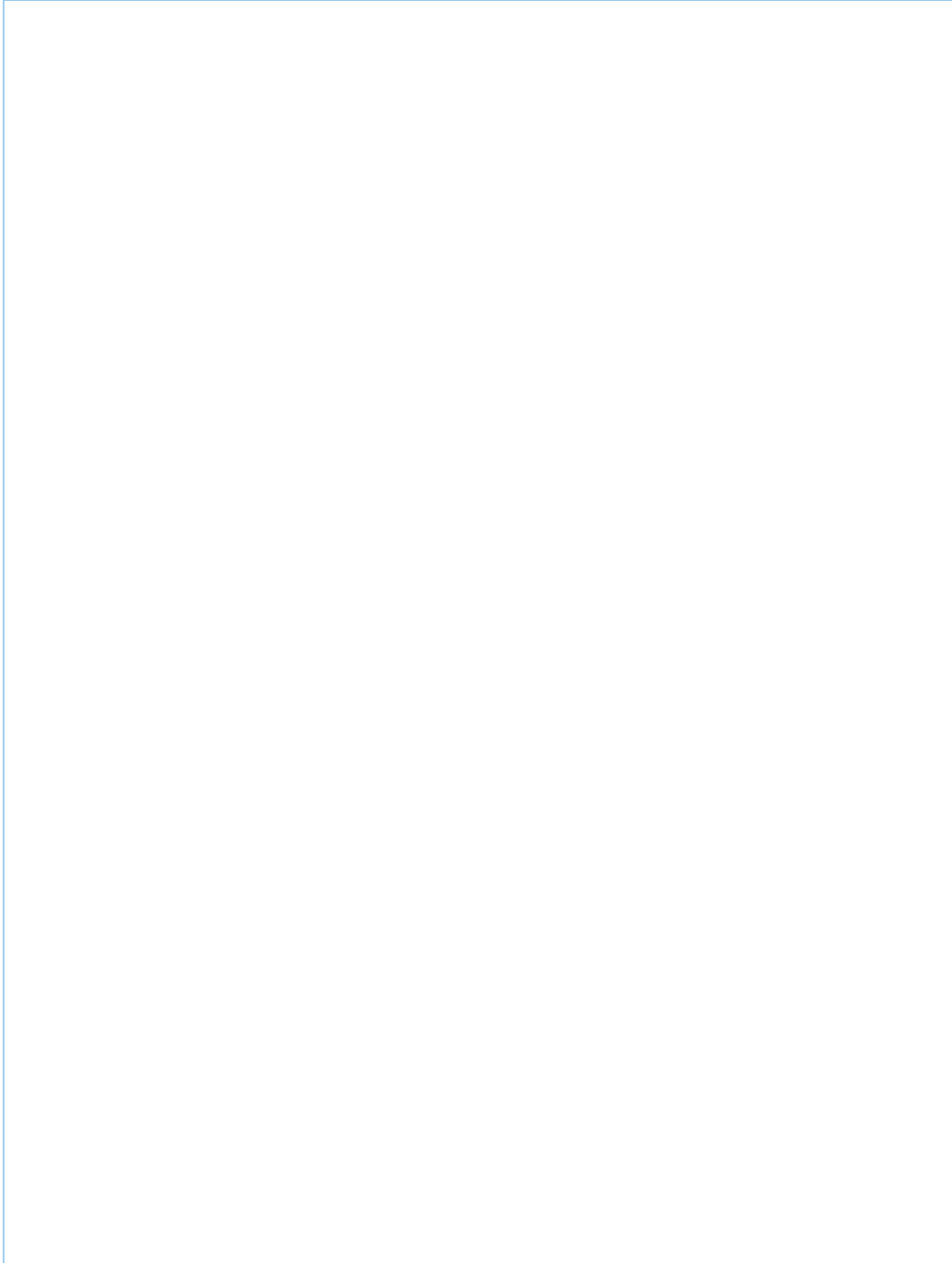
No

14. Is your impairment congenital or later acquired?

Congenital (from birth)

Later acquired

15. If your impairment was later acquired, what impact, if any, did it have on your time as an undergraduate student?



16. What law qualification do you hold?

PhD

MPhil

MRes

MsC

MA

PgDip (GDL or CPE)

LLM

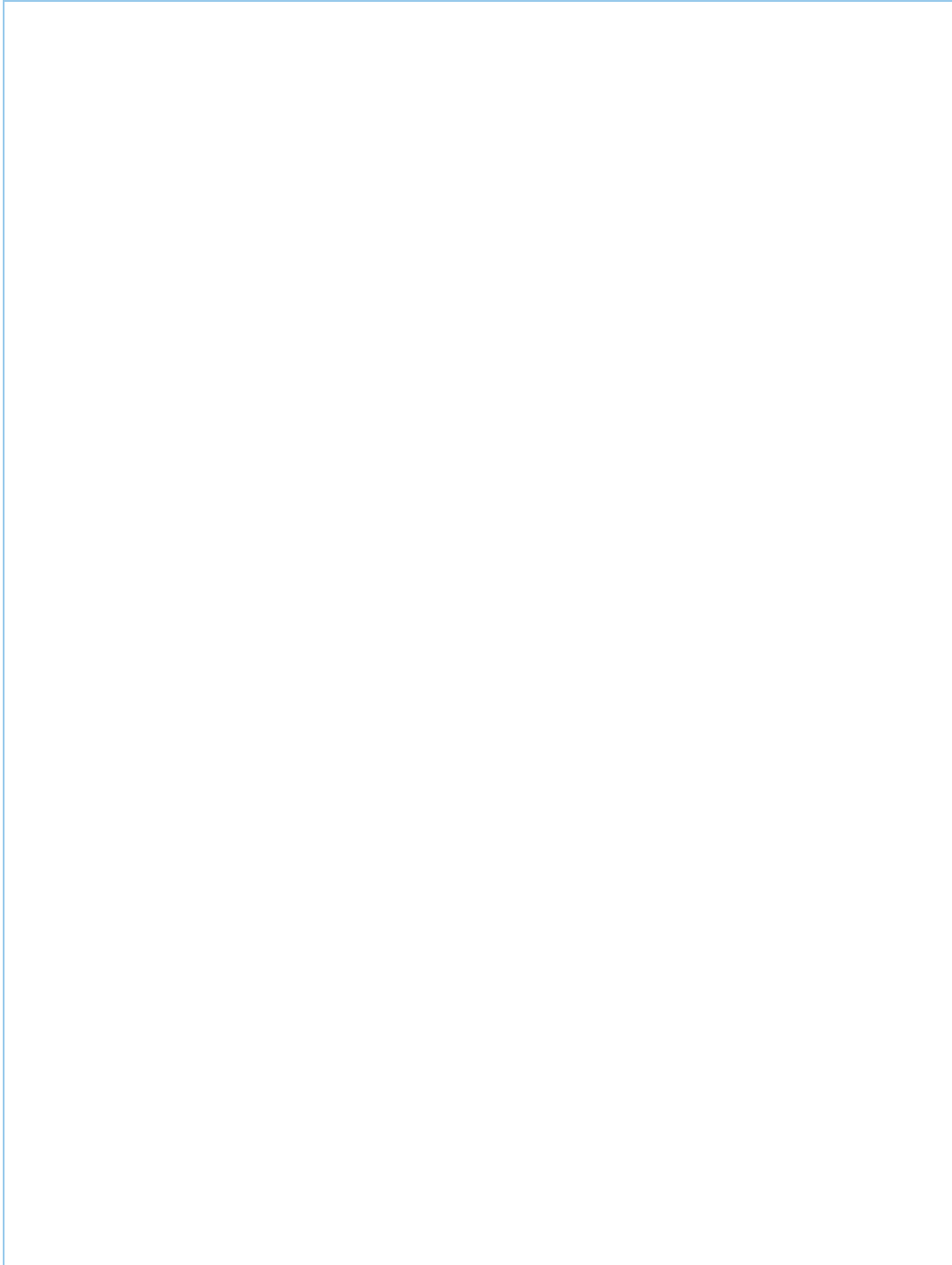
LLB

Other qualifications including qualifications from other jurisdictions or practitioner qualifications

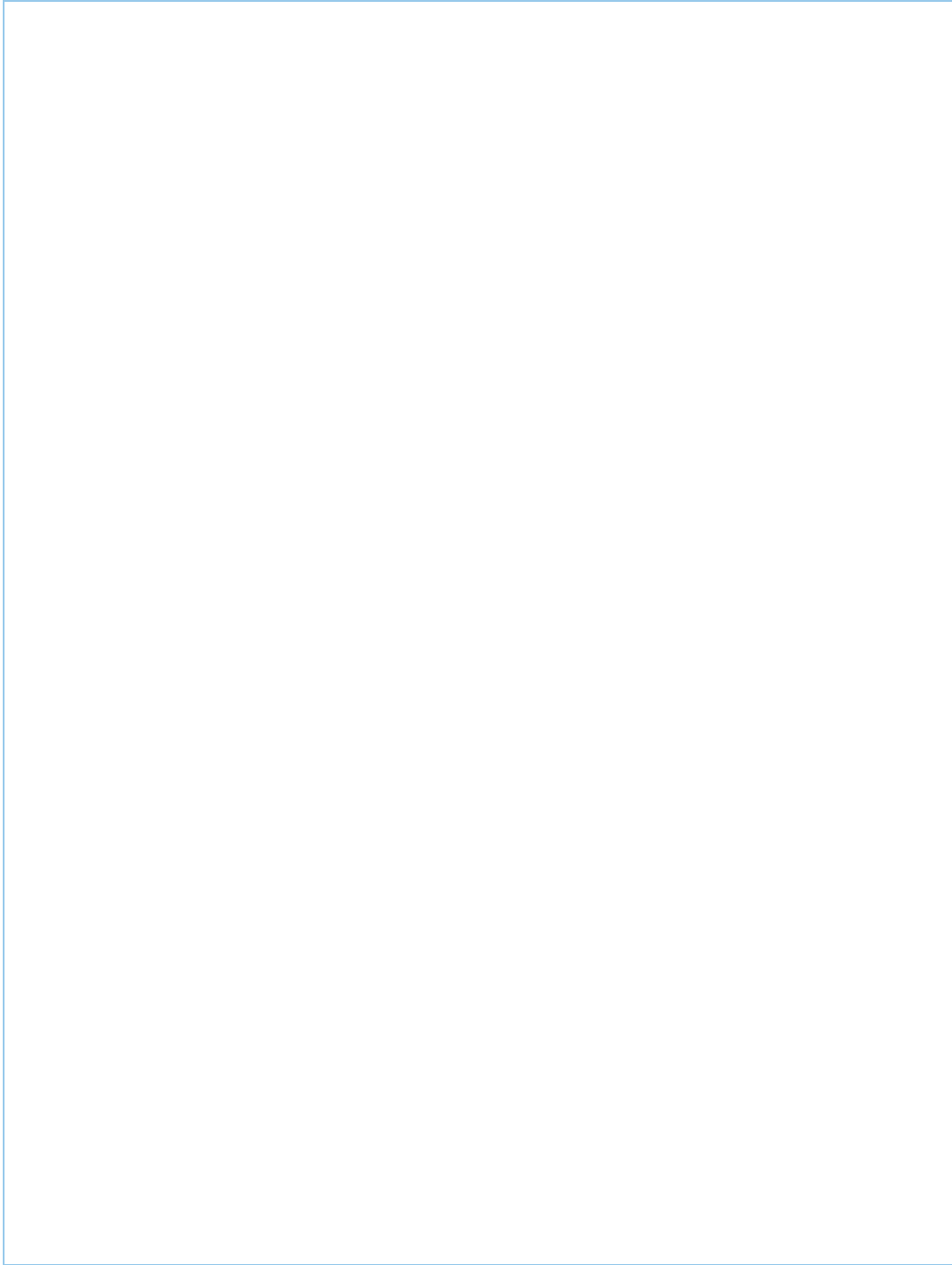
17. In what year did you complete your undergraduate legal education or equivalent e.g. LLB, GDL, CPE?

18. Please describe your own higher education experience and what, if any, barriers did you experience due to disability or impairment. Please also give an indication of any types of support you received and how useful you found it in addressing difficulties.

19. Do you think the same or other barriers still remain for students today?



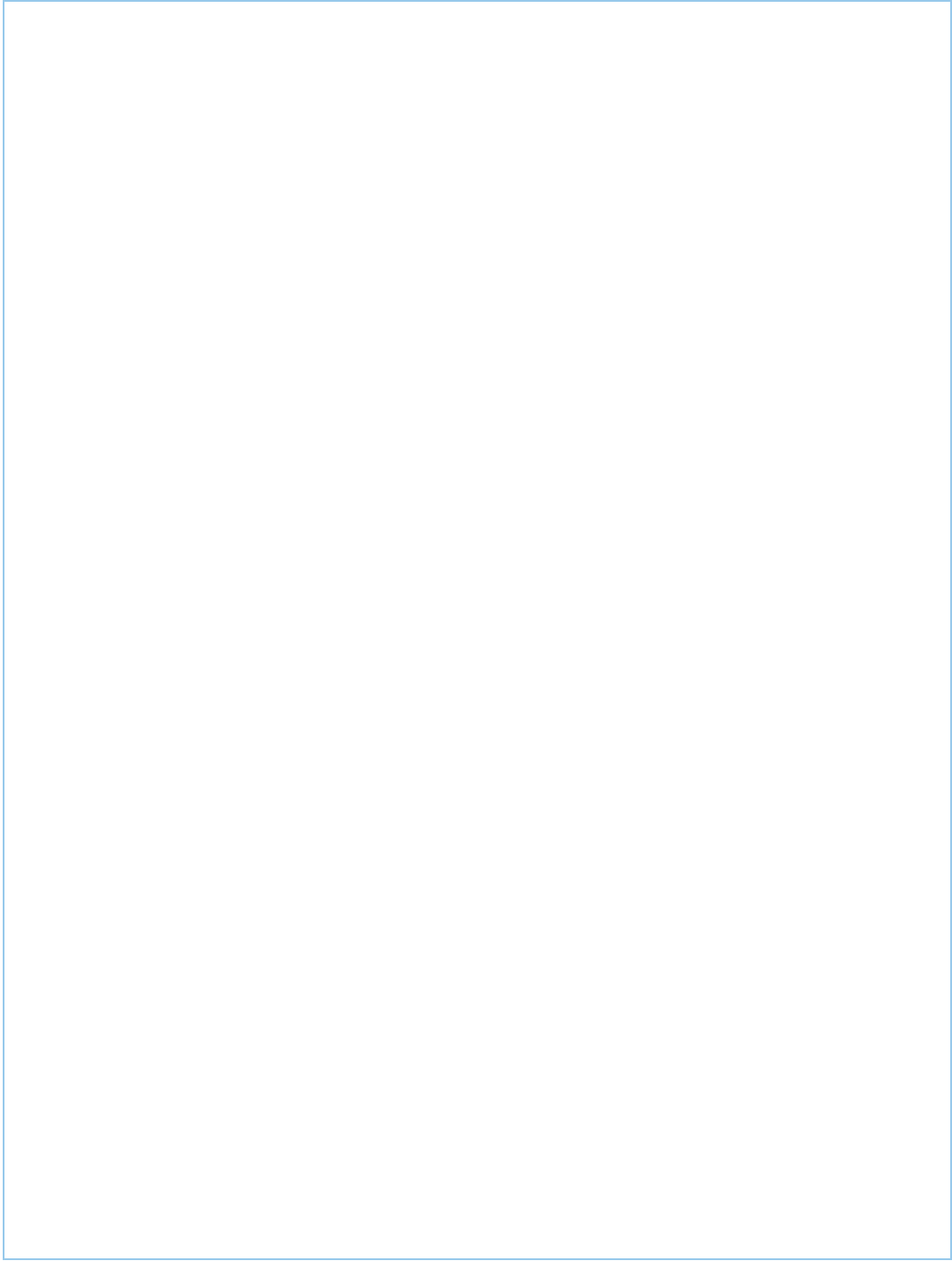
20. If yes, how could this be improved for students today?



End Page

Thank you very much for taking the time to complete this questionnaire.

21. Any comments or feedback about this questionnaire



A case study of the accessibility of undergraduate legal education in England for people with disabilities from the perspective of both students with disabilities and teaching staff

1. Consent

It is up to you to decide whether to take part in the case study. Please make sure that you have read and understood the information sheet attached to the invitation to complete this questionnaire before attempting to answer any of the questions. Once you have indicated your consent below it will not be possible for you to withdraw your responses to any submitted questions as these cannot be isolated and removed.

1. Please state your date of birth. This information is for administrative purposes only and will not inform or appear in the final analysis or submitted work. *

2. Do you give your consent for your anonymised responses to this questionnaire to be included in the final project and subsequent publications?

Yes

No

3. Have you read and understood the information sheet attached to the invitation to complete this questionnaire? *

Yes

No

2. About you

4. Do you consider yourself to have an impairment or disability? *

Yes

No

5. From the options below, please select the options that best describe the nature of your impairment. *

Sensory

Communication difficulties

Mobility

Mental Health

Diabetes or ongoing health issue

Aspergers

Non-specified learning difficulty

Specified learning difficulty

Autistic Spectrum disorder

Dyslexia

Epilepsy

No impairment

Other (please specify):

6. Do you consider yourself to be disabled? (Do you experience difficulties in accessing society due to your impairment?) *

Yes

No

7. Which university do you currently study at? *

8. What degree are you taking? *

LLB single honours

LLB joint honours

If joint honours please specify the joint subject

9. From the options below, please indicate where you live during term time. *

Family home

Own property

Private rent

University accommodation e.g. halls of residence

10. Please indicate your year of study. *

Year of Study

Year of study

11. Please list any elective modules you are taking this year. *

Elective 1

* e 1

Elective 2

Elective 3

Elective 4

12. Do you currently receive Disabled Students Allowance (DSA)? *

Yes

No

13. From the list below, please indicate which types of support you receive *

Note taking support

Library support

Scribe support

Non-medical helper

Reader support

Communication support e.g. sign language / interpreter

Other sensory support such as guiding

Personal care support (help with washing, dressing, eating, medication etc.)

None

Other (please specify)

14. Please indicate how many hours you receive of each type of support per week

Note taking

support

Library

support

Scribe

support

Non-medical

helper

Reader

support

Communication

support

e.g. sign

language /

interpreter

Other sensory

support such

as guiding

Support only

at exam time

(please specify

the type of

support you

receive)

Other (please

specify)

15. Are you willing to be contacted for interview? *

Yes

No

4. Support Needed for Interview

16. Please supply your most frequently used email address so that you can be contacted about the time, date and location for interview. This will happen 2 weeks before the interview. *

17. Which type of interview would you prefer? *

Face-to-face oral interview

Written interview (to be completed at the interview venue)

18. Please give a detailed description of any support you may need at interview.

19. If you would like a written interview, do you have your own laptop to bring to the interview?

Yes

No

20. Please indicate which part of the day you would prefer for interview. *

First session 10am - 1pm

Second session 2pm - 5pm

21. Please indicate any days you are not available for interview *

Monday morning 10am - 1pm

Monday afternoon 2pm - 5pm

Tuesday morning 10am - 1pm

Tuesday afternoon 2pm - 5pm

Wednesday morning 10am - 1pm

Wednesday afternoon 2pm - 5pm

Thursday morning 10am - 1pm

Thursday afternoon 2pm - 5pm


Friday morning 10am - 1pm

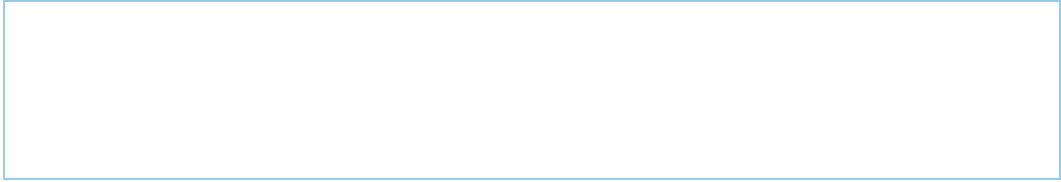
Friday afternoon 2pm - 5pm

Thank you very much

Thank you very much for taking the time to complete this survey.

22. Any comments or feedback about this survey. *





A case study of the accessibility of undergraduate legal education in England for people with disabilities from the perspective of both students with disabilities and teaching staff

Opening Statement:

Right, before we start, there are a few things I need to record for the tape:

1. Have you read and understood the information you were given before the interview?
2. Do you understand that this interview is being recorded?
3. Do you give your consent for your responses to be included and quoted in the submitted work?
4. You understand that you can withdraw consent at any point time before the tape recorder is switched off. Once this has happened you will not be able to withdraw your consent, review or edit your responses.
5. Can you confirm that you are happy to have a support worker/interpreter present?
6. Do you give your consent to be video taped? [Student will request this on an individual basis at stage 1]

If a support worker/interpreter is present:

1. Can you state your role in this interview and your relationship to the participant?
2. Have you signed the confidentiality agreement on the interview procedures sheet?

My name is Abi and I have come to ask you about your experiences as an undergraduate law student with a disability at an English University as part of the research for my PhD.

During the interview, I would like to discuss the following topics: Your experiences during A-levels, your experiences at university, and anything that you would like to discuss

You can take a break or stop the interview at any time. Are you happy to start?

Topic 1: Experiences of Post-16 education.		
Main Questions	Additional Questions	Clarifying Questions
1. Can you tell me a little bit about your time at Sixth Form/ College?	1. Why did you choose to study at that particular college? 2. What subjects did you choose to study and why? 3. How did you feel during your time there? 4. Did you have any contact with other students with disabilities there?	1. Did you feel included? Offered the chance to take part in extracurricular groups etc.? 2. Can you expand a little on this? 3. Can you tell me anything else?

		<p>4. Was that important to you? Why? Why not?</p>
<p>2. Can you tell me about the support you received at sixth form/college?</p>	<p>1. What kinds of support did you receive there?</p> <p>2. Did you feel as though teaching staff understood your support needs?</p> <p>3. How could things have been improved?</p>	<p>1. Did you understand why you could or could not receive any/certain types of support?</p> <p>2. Did you feel that the type of support you received was effective?</p> <p>3. Did you have a good rapport with support worker(s)?</p> <p>Why? Why not?</p>

		<p>4. Did you feel as though you were in control of the support you received?</p> <p>5. Can you give any examples?</p>
<p>4. Can you talk to me about your A level exams and results?</p>	<p>1. Was there anything you found difficult about sitting exams due to your disability/impairment?</p> <p>2. What support did you receive during exams?</p> <p>3. Were you pleased with your results?</p>	<p>1. Can you give an examples?</p> <p>2. Did you feel that the type of support you received was effective?</p> <p>3. What could have been done differently? Or</p> <p>What was positive?</p> <p>4. Why/why not?</p>

Topic 2: University		
<p>1. What made you choose to come here?</p> <p>2. How are you settling in?</p> <p>OR</p> <p>How have you found the 1st year/semester term?</p>	<p>1. Are you enjoying your course?</p> <p>2. What do you enjoy the most?</p> <p>3. How is your accommodation?</p> <p>4. Have you joined any groups or societies?</p>	<p>1. Why/why not?</p> <p>2. Is it different from how you thought it would be?</p> <p>3. What could be improved?</p> <p>4. Why did you choose those in particular?</p> <p>5. Has it helped you to meet people?</p> <p>6. Have you met any other students with disabilities?</p> <p>7. Is this important to you?</p> <p>8. Do you find them helpful and supportive?</p>
<p>3. Can you tell me a little bit about your choice to study law?</p>	<p>1. What made you decide to study Law?</p> <p>2. Did your disability or impairment influence your decision at?</p> <p>3. Can you elaborate on that?</p> <p>4. Can you give some examples?</p> <p>5. How so?</p>	

<p>4. Do you think the experiences of people with disabilities are represented on your course?</p>	<ol style="list-style-type: none"> 1. In which subject(s)? 2. How do feel about this? 3. How do think this could be changed? 	<ol style="list-style-type: none"> 1. Do you think this is important? 2. Why/not? 3. Do you feel as if you know more about how the law applies to your own situation because of this knowledge? 4. Do you find this helpful/useful?
<p>4. Can you tell me about the support you receive?</p> <ol style="list-style-type: none"> 1. Do you have an informal support network? 2. How is this helpful? 3. Are there any other types of 	<ol style="list-style-type: none"> 1. What kinds of support? 2. Did you feel as though teaching staff understood your support needs? 3. How could things have been improved? 	<ol style="list-style-type: none"> 1. Do you feel that the type of support you received was effective? 2. Do you have a good rapport with support worker(s)? <p>Why? Why not?</p>

support you'd like to discuss?		3. Do you feel as though you are in control of the support you receive?
What about exams and assessments?	<ol style="list-style-type: none"> 1. Are there any particular issues? 2. What could be done to improve things? 	<ol style="list-style-type: none"> 1. You mentioned the word [x] can you expand on that? 2. Can you give an example?

Is there anything you'd like to talk about that you feel we haven't covered?			

Thank you very much for taking part in the project. I just want to make sure that you still consent to take part. Once the tape is switched off, you will not be able to withdraw consent to take part, add to, or change your responses. Are you happy for it to be switched off?

A case study of the accessibility of undergraduate legal education in England for people with disabilities from the perspective of both students with disabilities and teaching staff

Opening Statement:

Right, before we start, there are a few things I need to record for the tape:

7. Have you read and understood the information you were given before the interview?
8. Do you understand that this interview is being recorded?
9. Do you give your consent for your responses to be included and quoted in the submitted work?
10. You understand that you can withdraw consent at any point time before the tape recorder is switched off. Once this has happened you will not be able to withdraw your consent, review or edit your responses.
11. Can you confirm that you are happy to have a support worker/interpreter present?
12. Do you give your consent to be video taped? [Student will request this on an individual basis at stage 1]

If a support worker/interpreter is present:

3. Can you state your role in this interview and your relationship to the participant?
4. Have you signed the confidentiality agreement on the interview procedures sheet?

My name is Abi and I have come to ask you about your experiences as an undergraduate law student with a disability at an English University as part of the research for my PhD.

During the interview, I would like to discuss the following topics: Your experiences at university, your experiences during A-levels and anything that you would like to discuss

You can take a break or stop the interview at any time. Are you happy to start?

Topic 1: University		
Main Questions	Further Information Questions	Clarifying Questions
<p>5. What made you choose to come here?</p> <p>6. How are you finding this year so far?</p>	<p>5. What do you enjoy the most?</p> <p>6. How is your accommodation?</p> <p>7. What is your dissertation topic?</p>	<p>9. Why/why not?</p> <p>10. Is it different from how you thought it would be?</p> <p>11. What could be improved?</p> <p>12. Why did you choose those in particular?</p> <p>13. Would you say that you know any</p>

		<p>other students with disabilities?</p> <p>14. Is this important to you?</p> <p>15. Do you find them helpful and supportive?</p>
<p>7. Can you tell me a little bit about your choice to study law?</p>	<p>6. What made you decide to study Law?</p> <p>7. Did your disability or impairment influence your decision at all?</p> <p>8. Can you elaborate on that?</p> <p>9. Can you give some examples?</p> <p>10. How so?</p>	
<p>8. Do you think the experiences of people with disabilities are represented on your course?</p>	<p>5. In which subject(s)?</p> <p>6. How do feel about this?</p> <p>7. How do think this could be changed?</p>	<p>5. Do you think this is important?</p> <p>6. Why/not?</p> <p>7. Do you feel as if you know more about how the law applies to your own situation because of this knowledge?</p> <p>8. Do you find this helpful/useful?</p>

<p>8. Can you tell me about the support you receive?</p> <p>4. Do you have an informal support network?</p> <p>5. How is this helpful?</p> <p>6. Are there any other types of support you'd like to discuss?</p>	<p>4. What kinds of support?</p> <p>5. Did you feel as though teaching staff understood your support needs?</p> <p>6. How could things have been improved?</p>	<p>4. Do you feel that the type of support you received was effective?</p> <p>5. Do you have a good rapport with support worker(s)?</p> <p>Why? Why not?</p> <p>6. Do you feel as though you are in control of the support you receive?</p>
<p>What about exams and assessments?</p>	<p>3. Are there any particular issues?</p> <p>4. What could be done to improve things?</p>	<p>3. You mentioned the word [x] can you expand on that?</p> <p>4. Can you give an example?</p>

Topic 2: Experiences of Post-16 education.		
Main Questions	Additional Questions	Clarifying Questions
3. Can you tell me a little bit about your time at Sixth Form/ College?	<p>5. Why did you choose to study at that particular college?</p> <p>6. What subjects did you choose to study and why?</p> <p>7. How did you feel during your time there?</p> <p>8. Did you have any contact with other students with disabilities there?</p>	<p>5. Did you feel included? Offered the chance to take part in extracurricular groups etc.?</p> <p>6. Can you expand a little on this?</p> <p>7. Can you tell me anything else?</p> <p>8. Was that important to you? Why? Why not?</p>

<p>4. Can you tell me about the support you received at sixth form/college?</p>	<p>5. What kinds of support did you receive there?</p> <p>6. Did you feel as though teaching staff understood your support needs?</p> <p>7. How could things have been improved?</p>	<p>6. Did you understand why you could or could not receive any/ certain types of support?</p> <p>7. Did you feel that the type of support you received was effective?</p> <p>8. Did you have a good rapport with support worker(s)?</p> <p>Why? Why not?</p> <p>9. Did you feel as though you were in</p>
---	--	--

		<p>control of the support you received?</p> <p>10. Can you give any examples?</p>
<p>5. Can you talk to me about your A level exams and results?</p>	<p>4. Was there anything you found difficult about sitting exams due to your disability/impairment?</p> <p>5. What support did you receive during exams?</p> <p>6. Were you pleased with your results?</p>	<p>5. Can you give an examples?</p> <p>6. Did you feel that the type of support you received was effective?</p> <p>7. What could have been done differently?</p> <p><u>Or</u></p> <p>What was positive?</p> <p>8. Why/why not?</p>

Is there anything you'd like to talk about that you feel we haven't covered?			
---	--	--	--

Thank you very much for taking part in the project. Thank you very much for taking part in the project. I just want to make sure that you still consent to take part. Once the tape is switched off, you will not be able to withdraw consent to take part, add to, or change your responses. Are you happy for it to be switched off?

A case study of the accessibility of undergraduate legal education in England for people with disabilities from the perspective of both students with disabilities and teaching staff

Declaration – Please tick if you agree

1. Have you read and understood the information you were given before the interview?
2. Do you give your consent for your responses to be included and quoted in the submitted work?
3. You understand that you can withdraw consent at any point up to six weeks before the submission of the work?
4. You will be notified of this deadline via the email you supplied, if there is any change to your email address, you will notify the researcher immediately.
5. Can you confirm that you are happy to have a support worker/interpreter present?

If a support worker/interpreter is present:

1. What is your role in this interview and your relationship to the participant?

2. Have you signed the confidentiality agreement on the interview procedures sheet?



Participant's signature:

Support Worker's signature (If present):

Declaration Slip to be removed by researcher when answer sheet is returned

Explanation

This interview is your opportunity to discuss your experiences as an undergraduate law student with a disability at an English University. Though you will be asked questions which will be divided into two broad topics, 1. Your experiences at university and 2. Your Experiences during you're A-Levels, these should be viewed as prompts only. It is your decision what you include or not and you are free not to answer questions that you don't want to. There will be guidance phrases which may help you decide what you wish to include in each section.

Topic 1 – University

1. What made you choose to come here? How are you finding this year so far?

In this section you might want to think about:

1. What do you enjoy the most?
2. How is your accommodation?
3. What is your dissertation topic?
4. Is it different from how you thought it would be?
5. What could be improved?
6. Why did you choose those in particular?

2. Can you tell me a little bit about your choice to study law?

In this question you may want to think about:

1. Did your disability or impairment influence your decision at all?
2. Can you elaborate on that?
3. Can you give some examples?
4. How so?

3. Do you think the experiences of people with disabilities are represented on your course?

In this section you might want to think about:

1. In which subject(s)?
2. How do you feel about this?
3. How do you think this could be changed?
4. Do you think this is important?
5. Why/not?
6. Do you feel as if you know more about how the law applies to your own situation because of this knowledge?
7. Do you find this helpful/useful?

4. Can you tell me about the support you receive?

In this section you might want to think about:

1. Do you have an informal support network?
2. How is this helpful?
3. Do you feel that the type of support you received was effective?
4. Do you have a good rapport with support worker(s)? Why? Why not?

5. Can you tell me about how you access exams and assessments?

In this section you might want to think about:

1. Are there any particular issues?
2. What could be done to improve things?

Topic 2: Experiences of Post-16 education.

1. Can you tell me a little bit about your time at Sixth Form/ College?

In this section you may want to think about:

1. Why did you choose to study at that particular college?
2. What subjects did you choose to study and why?
3. How did you feel during your time there?
4. Did you have any contact with other students with disabilities there?
5. Was this contact important to you?

2. Can you tell me about the support you received at sixth form/college?

In this section you might want to talk about:

1. What kinds of support did you receive there?
2. Did you feel as though teaching staff understood your support needs?
3. How could things have been improved?
4. Did you feel that the type of support you received was effective?
5. Did you have a good rapport with support worker(s)?

Why? Why not?

3. Can you talk to me about your A level exams and results?

In this section you might want to think about:

1. Was there anything you found difficult about sitting exams due to your disability/impairment?
2. What support did you receive during exams?
3. Were you pleased with your results?
4. Can you give examples?
5. Did you feel that the type of support you received was effective?

4. Is there anything you'd like to talk about that you feel we haven't covered?

Thank you very much for taking part in the project. I just want to remind you that once this interview booklet has been handed in or the document has been saved onto my memory pen you will no longer be able to withdraw your consent to take part, edit or review your responses.

A case study of the accessibility of undergraduate legal education in England for people with disabilities from the perspective of both students with disabilities and teaching staff

Declaration – Please tick if you agree

1. Have you read and understood the information you were given before the interview?

2. Do you give your consent for your responses to be included and quoted in the submitted work?

3. You understand that you can withdraw consent at any point up to six weeks before the submission of the work?

4. You will be notified of this deadline via the email you supplied, if there is any change to your email address, you will notify the researcher immediately.

5. Can you confirm that you are happy to have a support worker/interpreter present?

If a support worker/interpreter is present:

1. What is your role in this interview and your relationship to the participant?
-

2. Have you signed the confidentiality agreement on the interview procedures sheet?

Participant's signature:

Support Worker's signature (If present):

Declaration Slip to be removed by researcher when answer sheet is returned

Explanation

This interview is your opportunity to discuss your experiences as an undergraduate law student with a disability at an English University. Though you will be asked questions which will be divided into two broad topics, 1. Your Experiences during you're A-Levels and 2. Your experiences at university, these should be viewed as prompts only. It is your decision what you include or not and you are free not to answer questions that you don't want to. There will be guidance phrases which may help you decide what you wish to include in each section.

Topic 1: Experiences of Post-16 education.

1. Can you tell me a little bit about your time at Sixth Form/ College?

In this section you may want to think about:

1. Why did you choose to study at that particular college?
2. What subjects did you choose to study and why?
3. How did you feel during your time there?

2. Can you tell me about the support you received at sixth form/college?

In this section you might want to think about:

1. What kinds of support did you receive there?
2. Did you feel as though teaching staff understood your support needs?
How could things have been improved?
3. Did you feel that the type of support you received was effective?

3. Can you talk to me about your A level exams and results?

In this section you might want to think about:

1. Was there anything you found difficult about sitting exams due to your disability/impairment?
2. What support did you receive during exams?
3. Were you pleased with your results?
4. Did you feel that the type of support you received was effective?

Topic 2: University

1. What made choose this university?

In this section you might want to think about:

1. Are you enjoying your course?
2. What do you enjoy the most?
3. How is your accommodation?
4. Have you joined any groups or societies?
5. Is it different from how you thought it would be?
6. What could be improved?
7. Why did you choose those in particular?
8. Has it helped you to meet people?
9. Have you met any other students with disabilities?
10. Is this important to you?
11. Do you find them helpful and supportive?

2. Can you tell me a little bit about your choice to study law?

In this section you might want to think about:

1. Did your disability or impairment influence your decision at all?
2. Can you elaborate on that?
3. Can you give some examples?
4. How so?

3. Do you think the experiences of people with disabilities are represented on your course?

In this section you might want to think about:

1. In which subject(s)?
2. How do feel about this?
3. How do think this could be changed?
4. Do you think this is important?
5. Why/not?
6. Do you feel as if you know more about how the law applies to your own situation because of this knowledge?
7. Do you find this helpful/useful?

4. Can you tell me about the support you receive?

In this section you might want to think about:

1. Do you have an informal support network?
2. How is this helpful?
3. Are there any other types of support you'd like to discuss?
4. Do you feel that the type of support you received was effective?
5. Do you have a good rapport with support worker(s)?
Why? Why not?
6. Do you feel as though you are in control of the support you receive?

5. Can you tell me about how you access exams and assessments?

In this section you may want to think about:

1. Are there any particular issues?
2. What could be done to improve things?

6. Is there anything you'd like to talk about that you feel we haven't covered?

Thank you very much for taking part in the project. I just want to remind you that once this interview booklet has been handed in or the document has been saved onto my memory pen you will no longer be able to withdraw your consent to take part, edit or review your responses.

A case study of the accessibility of undergraduate legal education in England for people with disabilities from the perspective of both students with disabilities and teaching staff

Research Team Transcriber's Agreement

Data Destruction and Storage:

I will not make copies of any data that I am asked to transcribe, either audio files or completed transcripts in electronic or hardcopy format.

Any hardcopy data (CDS) entrusted to me will be stored in a locked box when not in use.

Hardcopy data (CDS) will be returned to and collected from the researcher in person.

Any files on my computer will be destroyed after transcription of the set of data is complete.

Conflict of interest:

If I become aware of a conflict of interest, such as recognising a participant who is known to me, I will stop transcription immediately and inform the researcher.

Confidentiality:

I understand that anything I may hear, or transcribe from the interviews is confidential and should not be disclosed to any third party, unless required by law.

Signed:

Date:

Support Worker's Agreement

A case study of the accessibility of undergraduate legal education in England for people with disabilities from the perspective of both students with disabilities and teaching staff

Research Team Support Worker's Agreement

Access to data:

I will only access the data when required to do so by the researcher. I will not make copies of any data unless I am asked, either audio files or completed transcripts and written interview scripts in electronic or hardcopy format.

Confidentiality:

I understand that anything I may hear, or read from the interviews is confidential and should not be disclosed to any third party, unless required by law.

Conflict of interest:

If I become aware of a conflict of interest, such as recognising a participant who is known to me, I will inform the researcher.

Signed:

Date:

Bibliography

Journals

Adams S, 'Classroom Accommodations for Law Students with Disabilities' [1988] 48(2) *Journal of Legal Education* 295.

Argyris C and Schön D A, *Organisational Learning: A Theory of Action Perspective* (Reading, MA: Addison-Wesley, 1978) 8 in P Watson, 'Leading Change in Legal Education: Interesting ideas for Interesting Times' [2012] *Legal Education Review*

Ball M J, (2010) *Legal education and the 'idealistic student': Using Foucault to unpack the critical legal narrative*, *Monash University Law Review*. 103

Barnes C and Oliver M, 'Disability studies, disabled people and the struggle for inclusion' [2010] 31(5) *British Journal of Sociology of Education*

Barclay L, 'The Importance of Equal Respect: What the Capabilities Approach Can and Should Learn from Human Rights Law' [2014] 64(2) *Political Studies*

Baruch Y, 'Career development in organizations and beyond: Balancing traditional and contemporary viewpoints' [2006] 16 *Human Resource Management Review*

Beauchamp-pryor K, 'From absent to active voices: securing disability equality within higher education' [2012] 16(3) *International Journal of Inclusive Education*

Bergold J and Thomas S, 'Participatory Research Methods: A Methodological Approach in Motion' [2012] 13(1) *Forum: Qualitative Social*

Research <[http://www.qualitative-](http://www.qualitative-research.net/index.php/fqs/article/view/1801/3334)

[research.net/index.php/fqs/article/view/1801/3334](http://www.qualitative-research.net/index.php/fqs/article/view/1801/3334)> accessed 3 August 2018. 3.1

Bolt D, 'Disability and the Rhetoric of Inclusive Higher Education'
[2004] 28(4) *Journal of Further and Higher Education* 355-356

Boyd White J, 'Invisible discourses of the law: Reflections on legal literacy and general education' [1983] 54 (2) *Colorado Law Review*

Bradney A, 'Elite Values in Twenty-first Century, United Kingdom Law Schools'
[2008] 42(291) *The Law Teacher*.

Bradney A, 'Law as a Parasitic Discipline' [1998] 25(1) *Journal of Law and Society*

Brooks, K. and D Parkes, 'Queering Legal Education: A Project of Theoretical
Discovery' (2004) 27 *Harvard Women's Law Journal*

Burchardt T, 'Capabilities and disability: the capabilities framework and the social
model of disability' [2004] 19(17) *Disability & Society*

Burridge R and Webb J, 'The Values of Common Law Legal Education
revisited' [2008] 42(3) *The Law Teacher*

Burridge R and Webb J, 'The Values of Common Law Legal Education: Rethinking
Rules, Responsibilities, Relationships and Roles in the Law School' [2007] 10(1) *Legal
Ethics*

Courtney B and Stevenson R, 'Avoiding the threat of gogymania.' [1983] 6 (7) *Lifelong
Learning: An Omnibus of Practice and Research* 10-11 in Davenport J and Davenport

JA, 'A Chronology and Analysis of the Andragogy Debate' [Spring 1985] 35(3) *Adult Education Quarterly*

Cowan D, 'Legal Consciousness: Some Observations' [2004] 67(6) *The Modern Law Review*.

Cownie F, 'Alternative Values in Legal Education' [2003] 6(2) *Legal Ethics*

Cownie F, 'The Importance of Theory in Law Teaching' (2000) 7 *International Journal of the Legal Profession*

Cownie F, 'Twining, teachers of law and law teaching' [2011] 18 (1-2) *International Journal of the Legal Profession*

Crenshaw K, 'Forward: Toward a Race-Conscious Pedagogy in Legal Education ' [1988-1990] 1(11) *Nat'l Black LJ*

Crenshaw K, 'Mapping the Margins: Intersectionality, Identity Politics and Violence against Women of Colour' [1991] 43(0) *Stanford Law Review*

Crespi G S, 'Efficiency Rejected: Evaluating 'undue hardship' claims under the Americans with Disabilities Act' [1990] *Tulsa Law Journal*, 26(1)

Dark OC, 'Incorporating Issues of Race, Gender, Class, Sexual Orientation, and Disability into Law School teaching' [1996] 32(3) *Willamette Law Review*

Davies M, 'The Special Educational Needs and Disability Act 2001—The implications for higher education' [2003] 15(1) *Education and The Law*

Day S and Brodsky G., 'The Duty to Accommodate: Who will benefit?'(1996) 75
Canadian Bar Review

Degener T, 'Disability in a Human Rights Context' [2016] 5(3) *Laws*

Dejaeghere J and Tudball L, 'Looking Back, Looking Forward: Critical Citizenship As
A Way Ahead For Civics And Citizenship Education In
Australia' [2007] 3(2) *Citizenship Teaching and Learning Special Issue: Reflections on
the IEA Civic Education Study (1995-2005)*

Delgado R, 'The Ethereal Scholar: Does Critical Legal Studies Have What Minorities
Want?' [1987] 22 *Harv CR- CL L Rev*

DelPo Kulow M, 'Teaching Disability Employment Discrimination Law:
Accommodating Physical and Mental Disabilities' [Summer/Fall 2012] 29(2) *Journal
of Legal Studies Education*

Dempster JA and others, 'An academic development model for fostering innovation
and sharing in curriculum design' [2012] 49(2) *Innovations in Education and Teaching
International*

Dhanda A, 'Constructing a new human rights lexicon: Convention on the Right of
Persons with disabilities' [2008] Year 5(Number 8) *SUR – International Journal on
Human Rights*

Dowd N and others, 'Diversity Matters: Race, Gender, and Ethnicity in Legal
Education' [2003] 15(1) *University of Florida Journal of Law and Public Policy*

Edelman LB and others, 'On Law, Organizations, and Social Movements' [2010] 6
Annu Rev Law Soc Sci

Ellison N, 'Proactive and Defensive Engagement: Social Citizenship in a Changing
Public Sphere' [2000] 5(3) Sociological Research Online

Ferris G, 'Values ethics and legal ethics: the QLD and LETR Recommendations 6, 7,
10, and 11' [2014] 48(1) The Law Teacher

Finkelstein V, 'Book Review' [1999] 14(6) Disability and Society

Flynn E, 'Making human rights meaningful for people with disabilities: advocacy,
access to justice and equality before the law' [2013] 17(4) The International Journal of
Human Rights

Francis, A. and McFarlane I, 'After Dark and Out in the Cold: Part time Law Students
and the Myth of 'Equivalency"' (2009) 36 *Journal of Law and Society*

French P and Kayess R, 'Out of Darkness into Light? Introducing the Convention on
the Rights of Persons with Disabilities' [2007] Human Rights Law Review 27

Fullan M, *Change Forces: Probing the Depths of Educational Reform* (Falmer Press, 1993) viii
in Watson P, 'Leading Change in Legal Education: Interesting ideas for Interesting
Times' [2012] Legal Education Review

Fuller M, Healey M, Bradley A & Hall T 'Barriers to learning: a systematic study of the experience of disabled students in one university' [2004] 29:3 *Studies in Higher Education*

Geis G, 'Thorstein Veblen on Legal Education' [1957] 10(1) *J Legal Educ.*

Geisinger AC and Stein MA, 'Expressive Law and the Americans with Disabilities Act' [2016] 114(6) *Michigan Law Review*

Gibson S, 'Narrative accounts of university education: socio-cultural perspectives of students with disabilities' [2012] 27(3) *Disability & Society*

Glanzer PL and Ream TC, 'Addressing the moral quandary of contemporary universities: rejecting a less than human moral education' [2008] 29(2) *Journal of Beliefs & Values*

Goode J, 'Managing' disability: early experiences of university students with disabilities' [2007] 22(1) *Disability & Society*

Grimes R, 'Legal literacy, community empowerment and law schools—some lessons from a working model in the UK' [2003] 37(3) *The Law Teacher*

Guth J and Ashford C, 'The Legal Education and Training Review: regulating socio-legal and liberal legal education?' [2014] 48(1) *The Law Teacher*

Habib L and others, 'Dyslexic students in higher education and virtual learning environments: an exploratory study' [2012] 28(6) *Journal of Computer Assisted Learning*

Halpern S, ' On the Politics and Pathology of Legal Education (Or, Whatever Happened to that Blindfolded Lady with the Scales?)' [1982] 32 Journal of Legal Education

Hargreaves J and others, 'The preparation and practice of disabled health care practitioners: exploring the issues' [2014] 51(3) Innovations in Education and Teaching International

Hedrick T, 'Reification in and through law: Elements of a theory in Marx, Lukács, and Honneth' [2014] 13(2) European Journal of Political Theory

Hepple B, 'The Renewal of the Liberal Law Degree' [1996] 55(3) Cambridge Law Journal

Hepple B, 'The New Single Equality Act in Britain' [2010] The Equal Rights Review 11-24.

Holmes G and Abington-Cooper M, 'Pedagogy vs. Andragogy: A False Dichotomy?' [Summer/Fall 2000] 26 (2) Journal of Technology Studies

Hosking D, 'A High Bar for EU Disability rights' [2007] 36(2) Industrial Law Journal

Hughes B, 'Being disabled: towards a critical social ontology for disability studies' [2007] 22(7) Disability & Society

Hyatt D, 'A Critical Literacy Frame for UK secondary education contexts' [2005] 39(1) English in Education

Jacklin A, 'To be or not to be 'a disabled student' in higher education: the case of a postgraduate 'non-declaring' (disabled) student' [2011] 11(2) Journal of Research in Special Educational Needs

Jaques D, 'ABC of learning and teaching in medicine Teaching small groups' [2003] 326(1) BMJ

Johnson L and Morris P, 'Towards a framework for critical citizenship education' [2010] 21(1) The Curriculum Journal

Jütten T, 'What is Reification? A Critique of Axel Honneth' [2010] 53(3) Inquiry

Kanter A.S., 'The Promise and Challenge of the United Nations Convention on the Rights of Persons with Disabilities' [2007] 34 Syracuse J Int'l L & Com 314

Kennedy D, 'Legal Education and the Reproduction of Hierarchy' [1982] Journal of Legal Education 594

Khair S, 'Evaluating Legal Empowerment: Problems of Analysis and Measurement' [2009] 1 Hague journal on the Rule of Law

Knowles MS, The modern practice of adult education (New York: Cambridge, The Adult Education Company 1980). in G Holmes and M Abington-Cooper, 'Pedagogy vs. Andragogy: A False Dichotomy?' [Summer/Fall 2000] 26 (2) Journal of Technology Studies

Konur O, 'Teaching disabled students in higher education' [2006] *Teaching in Higher Education*

Larson DA, 'Access to Justice for People with disabilities: An Emerging Strategy' [2014] 3(2) *Laws*

Laurie G and Sethi N, 'Towards Principles-Based Approaches to Governance of Health-related Research using Personal Data' [2013] 4(1) *Eur J Risk Regul*

Lawson A, 'People with Psychosocial Impairments or Conditions, Reasonable Accommodation and the Convention on the Rights of Persons with Disabilities' [2008] *Law in Context* Vol. 26

Lawson A. "The United Nations Convention on the Rights of Persons with Disabilities: New Era or False Dawn?" [2007] 34 *Syracuse J Int'l L & Com*

Leighton P, 'The LLB as a liberal degree? A reassessment from an historical perspective' [2015] 22(1) *International Journal of the Legal Profession*

Lewis, O, 'Disabling Legal Barriers' (University of Leeds, 2016)

Liasidou A, 'Critical disability studies and socially just change in higher education' [2014] 41(2) *British Journal of Special Education*

Lightner KL and others, 'Reasons University Students with a Learning Disability Wait to Seek Disability Services' [2012] 25(2) *Journal of Postsecondary Education and Disability*

Lobel O, 'The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics' [2007] 120(4) Harvard Law Review

Lombardi A R and Murray C, 'Measuring university faculty attitudes toward disability: Willingness to accommodate and adopt Universal Design principles' [2011] 34(1) Journal of Vocational Rehabilitation

Macbeth J L, 'Reflecting on disability research in sport and leisure settings' [2010] 29(4) Leisure Studies 483

Madriaga, M. 'Enduring Disablism: Students with Dyslexia and their Pathways into UK Higher Education and Beyond' [2007] 22 (4) Disability and Society

Mayo P, 'Critical Literacy and Emancipatory Politics: The Work of Paulo Freire ' [1995] 15(4) International Journal of Educational Development <file:///ufs.iss.keele.ac.uk/homes/My%20Documents/1-s2.0-073805939500021T-main.pdf> accessed 18 June 2018

McCowan T, 'Opening spaces for citizenship in higher education: three initiatives in English universities' [2012] 37(1) Students in Higher Education

Meekosha H and Shuttleworth R, 'What's so 'critical' about critical disability studies?' [2009] 15(1) Australian Journal of Human Rights

Mégret F, 'The Disabilities Convention: Human Rights of Persons with Disabilities or Disability rights?' [2008] 30 Human Rights Quarterly

Merryman J H, 'Legal Education There and Here: A Comparison' [1975] 27 Stanford Law Review

Mohring PM, *Andragogy and pedagogy: A comment on their erroneous usage* (Training and Development Research Centre Project No. 21) St Paul, MN Department of Vocational and Technical Education, Minnesota University. in G Holmes and M Abington-Cooper, 'Pedagogy vs. Andragogy: A False Dichotomy?' [Summer/Fall 2000] 26 (2) Journal of Technology Studies

Molesworth M and others, 'Having, being and higher education: the marketisation of the university and the transformation of the student into consumer' [2009] 14(3) Teaching in Higher Education

Mortimore T and Crozier W R, 'Dyslexia and difficulties with study skills in higher education' [2006] 31(2) Studies in Higher Education

Mostert M, 'Useless Eaters: Disability as Genocidal Marker in Nazi Germany ' [2002] 36(3) The Journal of Special Education

Mouffe C, 'Citizenship and Political Identity ' [1992] 61(Summer) October

Nell I, 'Learning, changing and doing - Critical citizenship through ecumenical exposure' [2015] 1(2) Stellenbosch Theological Journal

Newton G and others, 'Use of Lecture Capture in Higher Education – Lessons from the Trenches' [March/April 2014] 58(2) TechTrends

- Nussbaum M, 'Capabilities as Fundamental Entitlements: Sen and Social Justice' [2003] 9:2(3) *Feminist Economics*
- O'Connor U & Robinson A, 'Accession or Exclusion? University and the Disabled Student: A Case Study of Policy and Practice' [1999] 53 *Higher Education Quarterly*
- Oliver M, 'Rewriting history: the case of the Disability Discrimination Act 1995' [2016] 31(7) *Disability & Society* 966–968
- Onnely, M. and Brocklemann K, 'Out of the Disability Closet: Strategic use of Perception Management by Select University Students with Disabilities' (2003) 18 *Disability and Society*
- Ortoleva S, 'Inaccessible Justice: Human Rights, Persons with Disabilities and the Legal System' [2011] 17(2) *ILSAJ Int'l & Comp L*
- Paetzold RL, 'Why Incorporate Disability Studies into Teaching Discrimination Law?' [Winter/Spring 2010] 27(1) *Journal of Legal Studies Education*
- Park S E and Howell T H, 'Implementation of a Flipped Classroom Educational Model in a Predoctoral Dental Course' [May 2015] 79(5) *Journal of Dental Education*
- Pearson A.V, 'The debate about wheelchair spaces on buses goes 'round and round': access to public transport for people with disabilities as a human right'. (Spring 2018) 69(1) *NILQ*
- Pearson A.V, 'What's worth got to do with it? Language and the socio-legal advancement of disability rights and equality', (2014) 20(3) *Web JCLI*

Perlin ML, "They Keep it All Hid': The Ghettoization of Mental Disability Law and its Implications for Legal Education' [2010] 54(3) St Louis University Law Journal Symposium Issue

Priestley M and others, 'The political participation of disabled people in Europe: Rights, accessibility and activism' [2016] 42(1-9) Electoral Studies.

Rahmatian Dr A, 'Make the butterflies fly in formation? Management of copyright created by academics in UK universities' [2014] 34(4) Legal Studies

Reay D and others, 'Fitting in' or 'standing out': Working-class students in UK higher education' [2010] 36(1) British Education Research Journal

Richardson HS, 'Some Limitations of Nussbaum's Capabilities' [2000] 19(309) QLR

Riddell S and Weedon E, 'Disabled students in higher education: Discourses of disability and the negotiation of identity' [2014] 63 International Journal of Educational Research

Rothstein L, 'Forty Years of Disability Policy in Legal Education and the Legal Profession: What Has Changed and What Are the New Issues' [2014] 22(3) Journal of Gender, Social Policy & the Law

Roulstone A, 'The Legal Road to Rights? Disabling Premises, Obiter Dicta and the Disability Discrimination Act 1995' [2003] 18(2) Disability

Sace L, 'Beyond Good Intentions Making Anti-discrimination Strategies Work' [2003] 18(5) Disability & Society

Schiek D, 'Intersectionality and the Notion of Disability in EU Discrimination Law' [2016] 53(1) Common Market Law Review

Schroeder D, 'Dignity: One, Two, Three, Four, Five, Still Counting' [2010] Cambridge Quarterly of Healthcare Ethics

Seale J and others, 'Not the right kind of ‘digital capital’? An examination of the complex relationship between disabled students, their technologies and higher education institutions' [2015] 82 Computers and Education

Shakespeare T and Watson N, 'The social model of disability: an outdated ideology?' [2002] 2(0) Research in Social Science and Disability

Shavell S, 'Should copyright of academic works be abolished?' [Spring 2010] 2(1) Journal of Legal Analysis

Shor I, 'What is Critical Literacy?' [1999] 1(4) Journal of Pedagogy, Pluralism and Practice

Silbey SS, 'After Legal Consciousness' [2005] 1(1) Annual Review of Law and Social Science

Silvers A and Pickering Francis L, 'Justice through Trust: Disability and the “Outlier Problem” in Social Contract Theory' [Symposium on Disability October 2005] 116(1) Ethics

Smith KH, 'Disabilities, Law Schools, and Law Students: A Proactive and Holistic Approach' [1999] 32(1) Akron Law Review

Smith N and others, 'Young People as Real Citizens: Towards an Inclusionary Understanding of Citizenship' [2007] 8(4) Journal of Youth Studies

Stanchi K, 'Resistance Is Futile: How Legal Writing Pedagogy Contributes to the Law's Marginalization of Outsider Voices' [1998] 103(1) Dickinson Law Review

Stein MA, 'Under the Empirical Radar: An Initial Expressive Law Analysis of the ADA (Book Review)' [2004] 90(4) Virginia Law Review

Stein MA and Lord JE, 'Monitoring the Convention on the Rights of Persons with Disabilities: Innovations, Lost Opportunities, and Future Potential' [2010] 32 Human Rights Quarterly

Stone DH, 'What Law Schools Are Doing to Accommodate Students with Learning Disabilities' [2000] 42(19) S Tex L Rev

Stone E, 'Book Review' [1999] 14(6) Disability and Society

Teitelbaum LE and others, 'Gender, Legal Education and Legal Careers' [1991] 41(443) Journal of Legal Education

tenBroek J, 'The Right to Live in the World: The Disabled in the Law of Torts' [1966] 54(2) California Law Review

Thomas, C 'How is disability understood? An examination of sociological approaches' [2004] 19(6) Disability & Society

Trandafir A, Ristea L, 'R&D Tax Relief in the European Union' [2014] Economics, Management, and Financial Markets

Vehmas S and Watson N, 'Moral wrongs, disadvantages, and disability: a critique of critical disability studies' [2014] 29(4) Disability and Society

Waddington L, 'When it is reasonable for Europeans to be confused: Understanding when a Disability accommodation is "reasonable" from a comparative perspective' [2007-8] 29(3) Comp Lab L & Pol'y J .

Walmsley J, 'Women and the Mental Deficiency Act of 1913: citizenship, sexuality and regulation' [2000] 28(2) British Journal of Learning Disabilities

Watson P, 'Leading Change in Legal Education: Interesting Ideas For Interesting Times' [2012] Legal Education Review

Watt S and others, 'Lecture Capture: An Effective Tool for Universal Instructional Design?' [2014] 44(2) Canadian Journal of Higher Education

Webb J, 'Being a Lawyer/Being a Human Being' [2002] 5(1&2) Legal Ethics

Weber, 'Beyond the Americans with Disabilities Act: A National Employment Policy for People with Disabilities' [1998] 46(1) Buffalo Law Review

White, J B, 'Invisible discourses of the law: Reflections on legal literacy and general education' [1983] 54 (2) Colorado Law Review

Zola I, 'Toward the Necessary Universalizing of a Disability Policy' [2005] 83(5) The Milbank Quarterly

Books

Adams M and others, *Teaching for Diversity and Social Justice* (Taylor & Francis 2007)

Anderson E, Justifying the capabilities approach to justice. in H Brighouse and I Roebyns (eds), *Measuring Justice* (Cambridge University Press 2010)

Anderson E S, Against Luck Egalitarianism: What Is the Point of Equality?. in M Clayton and A Williams (eds), *Social Justice* (Blackwell Publishing 2004)

Aristotle, 3 Ethica Nicomachea, 112-117, 1131a-1131b, Ackrill, J. L. and Urmson J. O. (eds.), W. Ross translation, Oxford University Press, 1980

Aristotle, *From The Nicomachean Ethics* W. D. Ross trans. (Oxford 1998)

Arnardóttir O Mjöll and Quinn G (eds), *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives* (Martinus Nijhoff 2009)

Arstein-Kerslake A. & Quinn G., Restoring the 'human' in 'human rights': personhood and doctrinal innovation in the UN disability convention. in C. Douzinas and C. Gearty (eds), *The Cambridge Companion to Human Rights Law* (CUP 2012)

Bagileri S and Ware L, Ending the Longing for Belonging Teaching Disability Studies in the College Core Curriculum. in A Kanter and B Ferri (eds), *Righting Educational Wrongs: Disability Studies in Law and Education* (Syracuse University Press 2013)

Bantekas I and Oette L, *International Human Rights Law and Practice* (2nd edn, Cambridge University Press 2016)

Bailey C, *Beyond the Present and the Particular: A Theory of Liberal Education* (Routledge & Kegan Paul plc 1984)

Bankowski Z and Mungham G, *Images of Law* (Routledge & Kegan Paul Ltd 1976)

Bantock GH, GH Bantock: The Closing of the Grammars is the Closing of Minds. in A O'Hear and M Sidwell (eds), *The Social Freedom: A Liberal Education Reader from Plato to the Present Day* (Imprint Academic 2009)

Barnes C, 'Emancipatory' disability research and special educational needs. in L Florian (ed), *The Sage Handbook of Special Education* (London:Sage 2007)

Barnes C and Oliver M, *The New Politics of Disablement* (2nd edn, Palgrave Macmillan 2012)

Barton L, Sociology, Disability Studies and Education: Some Observations. in T Shakespeare (ed), *The Disability Reader Social Sciences Perspectives* (Continuum 1998)

Barton L, 'Special Educational Needs: an alternative look. (A Response to Warnock M. 2005: Special Educational Needs - A New Look)' Institute of Education, University of London.

Basser L A, Human Dignity. in Rioux and others (eds), *Critical Perspectives on Human Rights and Disability Law* (Martinus Nijhoff Publishers 2011)

Becher T, *Academic Tribes and Territories* (Buckingham, Open University Press, 1989)

Becher T and Trowler P R, *Academic Tribes and Territories* (2nd edn, SRHE and Open University Press 2001)

Beckett AE, *Citizenship and Vulnerability: Disability and Issues of Social and Political Engagement* (1st edn, Palgrave 2006)

Bligh D. A, *What's the use of lectures?* (Jossey-Bass Publishers 2000)

Borsay A, *Disability and Social Policy in Britain since 1750* (1st, Palgrave Macmillan, Hampshire 2005)

Bourdieu P and Passeron JC, *Reproduction in Education, Society and Culture* (2nd edn, Sage Publications 2000)

Bradney A, 'Liberalising Legal Education' in F. Cownie, *The Law School – Global Issues, Local Questions* (Ashgate , 1999),.

Bradney A, *Conversations, Choices and Chances: The Liberal Law School in the Twenty-First Century* (Hart, 2003).

Broderick A, *The Long and Winding Road to Equality and Inclusion for Persons with Disabilities* (1st edn, Intersentia 2015)

Browning D, *Universalism vs Relativism: Making Moral Judgements in a Changing, Pluralistic, and Threatening World* (Rowman & Littlefield Publishers Inc 2006)

Brunkhorst H, *Adorno and Critical Theory* (University of Wales Press, Cardiff 1999)

Butler A and Morris A, *No Feet to Drag Report on the Disabled* (Sidgwick and Jackson Ltd 1972)

Byrne B, 'Minding the Gap? Children with Disabilities and The United Nations Convention on The Rights of Persons with Disabilities in M. Freeman (ed.), *Law and Childhood Studies*. (Oxford University Press, Oxford 2012)

Campbell F K, Legislating Disability Negative Ontologies and The Government of Legal Identities. in Shelley Tremain (ed), *Foucault and the Government of Disability* (University of Michigan Press 2005)

Cohen G. A, Against Equality of Resources: Relocating Dworkin's Cut. in M Clayton and A Williams (eds), *Social Justice* (Blackwell Publishing 2004)

Collini S, *Speaking of Universities* (Verso 2017)

Corker M, *Deaf and Disabled or Deafness Disabled?* (Open University Press 1997)

Corker M, The UK Disability Discrimination Act disabling language, justifying inequitable participation. in L Francis and A Silvers (eds), *Americans with Disabilities: Exploring Implications of the Law for Individuals and Institutions* (Routledge 2000)

Corker M and French S, Reclaiming Discourse in Disability Studies. in S French and M Corker (eds), *Disability discourse*(Open University Press 1999)

Costandius E and Biltzer E, *Engaging Higher Education Curricula: A critical citizenship perspective* (AFRICAN SUN MeDIA, 2015)

Cotterrell R, *The Sociology of Law: An Introduction* (2nd edition, Butterworth & Co Ltd 1992).

Cownie F, *Legal academics : culture and identities* (Hart 2004)

Coysh J, *Human Rights Education and the Politics of Knowledge* (1st edn, Routledge 2017) 6-9

Davis LJ, Constructing Normalcy: The Bell Curve, the Novel, and the Invention of the Disabled Body in the Nineteenth Century. in LJ Davis (ed), *The Disability Studies Reader* (Routledge 2006)

Delanty G, *Challenging Knowledge: The University in the Knowledge Society* (1st edn, Open University Press 2001)

Douzinas C, *The End of Human Rights: Critical Legal Thought at the turn of the century* (Hart Publishing 2000)

Dworkin R, Equality of Resources. in M Clayton and A Williams (eds), *Social Justice* (Blackwell Publishing 2004)

Dworkin R, *Taking Rights Seriously* (2nd 1997 edn, Bloomsbury Academic 2013)

Dworkin G, *The Theory and Practice of Autonomy* (1st, Cambridge University Press, Cambridge 1988)

Fairclough NL, *Critical Discourse Analysis: The Critical Study of Language* (Longman Group 1995)

Fairclough NL and Woodak R, Critical discourse analysis. in TA van dijk (ed), *Discourse Studies A Multidisciplinary Introduction, Discourse as Social Interaction* (Sage 1997)

Finkelstein V, Emancipating Disability Studies. in T Shakespeare (ed), *The Disability Reader Social Sciences Perspectives* (Continuum 1998)

Fish S, *Save the World on Your Own Time* (Oxford University Press 2012)

Fleischer D and Zames F, *The Disability rights Movement: From Charity to Confrontation* (Temple University Press 2011)

Flynn E, *Disabled justice?* (Ashgate, Farnham 2015)

Foucault M, *Discipline and Punish: The Birth of the Prison* (Penguin 1991).

Foucault M., 'Method' in Translated from the French by R Hurley (eds), *The Will to Knowledge: The History of Sexuality 1* (1st, Penguin, London 1978).

Foucault M, *The History of Sexuality Volume 1: An Introduction* (Random House, 1978).

Freire P, *Pedagogy of the Oppressed* (3rd edn, Continuum 2005)

Freire P, *Pedagogy of the Oppressed: 30th Anniversary Edition* (Continuum 2000)

Freire P, *The Politics of Education: Culture, Power and Liberation* (Macmillan 1985) 176

Gadamer GH, *Truth and Method* (Sheed & Ward 1974)

Gearty C, Socio-Economic Rights, Basic Needs, and Human Dignity: A Perspective from Law's Front Line. in McCrudden C (ed), *Understanding Human Dignity* (OUP 2014)

Germon P, 'Activists and Academics: Part of the Same or a World Apart?' in T Shakespeare (ed), *The Disability Reader Social Sciences Perspectives* (Continuum 1998)

Giangreco MF, "The stairs didn't go anywhere!": A Self-Advocate's Reflections on Specialized Services and their Impact on People with Disabilities. in Nind M, Rix J, Sheehy K, & Simmons K, (Eds.), *Inclusive education: Diverse perspectives* (David Fulton Publishers in Association with The Open University 2004)

Gilbert K and Schantz O, *The Paralympic Games: Empowerment or Side Show?* (Meyer & Meyer Verlag 2008)

Goffman E, Selections from Stigma. in LJ Davis (ed), *The Disability Studies Reader* (Routledge 2006)

Gooding C, *Blackstone's Guide to the Disability Discrimination Act 1995* (Blackstone Press Limited 1996)

Goodley D, *Disability Studies: An Interdisciplinary Introduction* (2nd edn, Sage

Grace S and Gravestock P, *Inclusion and Diversity: Meeting the needs of all students* (Routledge 2009)

Hammersley M, *The Politics of Social Research* (SAGE Publications 1995)

Harding S, How Standpoint Methodology Informs Philosophy of Social Science. in S Turner and P Roth (eds), *The Blackwell Guide to the Philosophy of the Social Sciences* (Blackwell Publishing 2003)

Harding S, Introduction: Standpoint Theory as a Site of Political, Philosophic and Scientific Debate. in S Harding (ed), *The Feminist Standpoint Theory Reader: Intellectual and Political Controversies* (Routledge 2004)

Hart H.L.A, *The Concept of Law* (3rd edn, OUP 2012)

Heater D, *What is Citizenship?* (Polity 1999)

Heidegger M, *Being and Time* (Blackwell 1962)

Held D, *Introduction to Critical Theory: Horkheimer to Habermas* (Hutchinson & Co 1980)

Holmes M S, *Fictions of Affliction* (University of Michigan Press 2009)

Hughes B, 'What can a Foucauldian Analysis Contribute to Disability Theory?' in S. Tremain (ed.), *Foucault and the Government of Disability* (The University of Michigan Press 2005).

Husserl E, Phenomenology. Translated by R E Palmer, *Encyclopaedia Britannica* (1927)
Para. 3 *The Self-contained Field of the Purely Psychological. --Phenomenological Reduction and True Inner Experience.*

Interview with Guido Gybels, RNID (now Action on Hearing Loss), 17 August 2009
in Varney, E 'Disability and Information Technology: A Comparative Study in Media Regulation' 2013 Cambridge University Press.

Jay G and Graff G, A Critique of Critical Pedagogy. in M Bérube and C Nelson (eds), *Higher Education Under Fire: Politics, Economics, and the Crisis of the Humanities* (Routledge 1995)

Jones M, Inclusion, Social Inclusion and Participation. in Rioux and others (eds), *Critical Perspectives on Human Rights and Disability Law* (Martinus Nijhoff Publishers 2011)

Kant I, Groundwork for the Metaphysics of Morals. in Wood A.W. (ed), *Groundwork for the Metaphysics of Morals* (Yale University Press 2002)

Kanter AS, The Relationship between Disability Studies and Law. in AS Kanter and B Ferri (eds), *Righting Educational Wrongs: Disability Studies in Law and Education*(Syracuse University Press 2013)

Kelly E, Equal opportunity, unequal capability. in H Brighthouse and I Roebyns (eds), *Measuring Justice* (Cambridge University Press 2010)

Kennedy D, Legal Education and the Reproduction of Hierarchy: A Polemic against the System. in Kennedy D (ed), *Legal Education and the Reproduction of Hierarchy: A Polemic against the System* (New York University Press 2004)

Kennedy D, The International Human Rights Regime: Still Part of the Problem? in O Windahl Pedersen (ed), *Examining Critical Perspectives on Human Rights* (Cambridge University Press 2013)

Kittay EF, Equality, Dignity and Disability. in MA Lyons and F Waldron (eds), *Perspectives on Equality: The Second Seamus Heaney Lectures* (The Liffey Press 2005)

Lawson A, The UN Convention On The Rights Of Persons With Disabilities And European Disability Law: A Catalyst For Cohesion? in O Mjöll Arnardóttir and G Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives* (Martinus Nijhoff 2009)

Lawson A, *Disability and Equality Law in Britain: The Role of Reasonable Adjustment* (Hart Publishing 2008)

Lawson A, Mind the Gap! Normality, Difference and the Danger of Disablement Through Law. in Lawson A and Gooding C (eds), *Disability rights in Europe From Theory to Practice* (Hart Publishing 2005)

Leavis F, *Education and the University* (2nd edn, CUP 1943)

Lewis O, The Expressive, Educational and Proactive Roles of Human Rights: An Analysis of the United Nations Convention on the Rights of Persons with Disabilities People with disabilities. in McSherry B and Weller P (eds), *Rethinking Rights-Based Mental Health Laws* (Oxford: Hart Publishing 2010)

Linton S, *Claiming Disability: Knowledge and Identity* (New York University Press 1998)

Lister R, *Exclusive Society: Citizenship and the Poor* (CPAG 1991)

Lukács G, *History and Class Consciousness* (MIT Press 1971) and Korsch K, *Marxism and Philosophy* (New Left Books 1970) in Held D, *Introduction to Critical Theory: Horkheimer to Habermas* (Hutchinson & Co 1980)

Lynch K, Lessons for higher education: the university as a site of activism. in Arnot M (ed), *The Sociology of Disability and Inclusive Education: A Tribute to Len Barton* (Routledge 2012)

Macnicol J, *Age Discrimination: An Historical and Contemporary Analysis* (1st, Cambridge University Press, Cambridge 2005)

Mahlmann M, The Good Sense of Dignity: Six Antidotes to Dignity Fatigue in Ethics and Law. in

Marshall T H, Citizenship and Social Class. in T Bottomore (ed), *Citizenship and Social Class* (Pluto Press 1992)

Matravers D, Introduction. in JJ Rousseau, *The Social Contract* (Wordsworth Editions 1998)

McAdams R H, *The Expressive Powers of Law: Theories and Limits* (Harvard University Press 2015)

McCrudden C (ed.), *Understanding Human Dignity* (OUP 2014)

Mercer G, From critique to practice: Emancipatory Disability Research. in C Barnes and G Mercer (eds), *Implementing the social model of disability: Theory and research* (Disability Press 2004) 118-137.

Merleau-Ponty M, *The Phenomenology of Perception* (Routledge and Kegan Paul 1962)

Mill JS, John Stuart Mill: Liberals Must Renew And Preserve The Great Tradition, in A O'Hear and M Sidwell (eds), *The Social Freedom: A Liberal Education Reader from Plato to the Present Day* (Imprint Academic 2009)

Mill JS, *On Liberty* (CreateSpace Independent Publishing Platform c2014)

Mill JS, Utilitarianism. in G Sher (ed), *Utilitarianism and the 1868 Speech on Capital Punishment* (Hackett Publishing Company c2001)

Minow M, *Making All the Difference: Inclusion, Exclusion, and American Law* (Cornell University Press 1990)

Mooney-Cotter AM, *This Ability: An International Legal Perspective of Disability Discrimination* (Ashgate Publishing Limited 2007)

Morris J, *Pride Against Prejudice: Transforming Attitudes to Disability* (The Women's Press 1991)

Moser PK and Carson TL, *Moral Relativism A Reader* (Oxford University Press 2001)

National Association of Head Teachers, 'Policy Paper on Special Schools' (July 2003) quoted in M Warnock, *Special Educational Needs: A New Look*. in L Terzi (ed), *Special Educational Needs: A New Look* 2nd ed (Bloomsbury Academic 2013) 34

Newman JH, *The Idea of a University* (CreateSpace Independent Publishing Platform c2016)

Norris P, *Critical Citizens: Global Support for Democratic Government* (OUP 1999)

Norris P, *Democratic Deficit: Critical Citizens Revisited* (CUP 2011)

Norwich B, A Response to 'Special Educational Needs: A New Look' in L Terzi (ed), *Special Educational Needs: A New Look* 2nd ed (Bloomsbury Academic 2013)

Nussbaum M, *Cultivating Humanity: A Classical Defence of Reform in Liberal Education* (Harvard University Press 1997)

Nussbaum M, *Frontiers of Justice: Disability, Nationality, Species Membership* (Harvard University Press 2007)

O'Hear A, 'The Good is not Reducible to Human Choice' in A O'Hear and M Sidwell (eds), *The Social Freedom: A Liberal Education Reader from Plato to the Present Day* (Imprint Academic 2009)

Oakeshott M, in O'Hear A and Sidwell M (eds), *The Social Freedom: A Liberal Education Reader from Plato to the Present Day* (Imprint Academic 2009)

Oliver M, Emancipatory Research: Realistic goal or impossible dream?. In C Barnes and G Mercer (eds), *Doing Disability Research* (The Disability Press 1997)

Oliver M, *The Politics of Disablement* (Basingstoke: Palgrave Macmillan, 1990)

Oliver M, *Understanding Disability: From Theory to Practice* (Palgrave 1996)

Oxford Dictionary of English (3rd edn, Oxford University Press 2010)

Pelka F, *What we have done: An Oral History of the Disability rights Movement* (University of Massachusetts Press 2012)

Pogge T, A Critique of the Capability Approach. in H Brighthouse and I Roebyns (eds), *Measuring Justice* (Cambridge University Press 2010)

Posner RA, *The Problematics of Moral and Legal Theory* (Harvard University Press 1999)

Pothier D and Devlin R (eds), *Critical Disability Theory: Essays in Philosophy, Politics, Policy, and Law* (UBC Press 2006)

Pothier D & Devlin R, Introduction: Towards a Critical Theory of Dis-Citizenship. in Pothier D and Devlin R (eds), *Critical Disability Theory: Essays in Philosophy, Politics, Policy, and Law* (UBC Press 2006)

Power A and others, *Active Citizenship and Disability: Implementing the Personalisation of Support* (1st edn, Cambridge 2013)

Priestley M, *Disability: A Life Course Approach* (1st, Polity Press, Cambridge 2003)

Priestley M, We're all Europeans now! The social model of disability and European social policy and the Majority World. in C Barnes and G Mercer (eds), *The Social Model of Disability: Europe and the Majority* (Leeds University Press 2005)

Quarmby K, *Scapegoat: Why we are failing Disabled People* (Portobello Books 2013)

Quinn G, Rethinking personhood: New Directions in Legal Capacity Law & Policy. Or How to put the 'Shift' back into 'Paradigm Shift' (1st, University of British Columbia, Vancouver, Canada 2011)

Quinn G, The European Social Charter and EU Anti-discrimination Law in the Field of Disability: Two Gravitational Fields with One Common Purpose. in G, de Burca and B de Witte (eds), *Social Rights in Europe* (OUP 2005)

Quinn G, The Human Rights of People with Disabilities under EU Law. in Alston and others (eds), *The EU and Human Rights* (OUP 1999)

Quinn G, 'Resisting the Temptation of Elegance: Can the Convention on the Rights of Persons with Disabilities Socialise States to Right Behaviour?' in O Mjöll Arnardóttir, G Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities European and Scandinavian Perspectives* (1st, Koninklijke Brill NV, Leiden, the Netherlands. 2009)

Rawls J, *A Theory of Justice* (Revised edn, OUP 1999)

Rawls J, *Justice As Fairness A Restatement* (Universal Law Publishing Company 2001)

Rawls J, *Political Liberalism* (Columbia University Press 1993)

Raz J, *The Morality of Freedom* (Oxford University Press 1986)

Raz J, *Value, Respect and Attachment* (Cambridge University Press 2001)

Rees A M, T H Marshall and the progress of citizenship. in M Bulmer and A M Rees (eds), *Citizenship Today: The Contemporary Relevance of TH Marshall* (UCL Press 1996)

Reeve D, Part of the problem or part of the solution? How far do 'reasonable adjustments' guarantee 'inclusive access for disabled customers?'. in Soldatic and others(eds), *Disability, Spaces and Places of Policy Exclusion* (Routledge 2014)

Reeve D. 'Psycho-emotional disablism and internalised oppression', (2014) in J. Swain, S. French, C. Barnes and C. Thomas (eds) *Disabling Barriers - Enabling Environments*, 3rd Edition, London: Sage,

Rioux M H and Valentine F, Does Theory Matter? Exploring the Nexus between Disability, Human Rights, and Public Policy. in D Pothier and R Devlin (eds), *Critical Disability Theory: Essays in Philosophy, Politics, Policy, and Law* (UBC Press 2006)

Rorty R, *Contingency, irony and solidarity* (Cambridge University Press 1989)

Rorty R, Human Rights, Rationality and Sentimentality. In R Rorty (ed), *Truth and Progress: Philosophical Papers Volume 3* (Cambridge University Press 1998) 167-185

Rosen M, Dignity: The Case Against. in McCrudden C (ed), *Understanding Human Dignity* (OUP 2014) 143

Rousseau J J, *The Social Contract* (Wordsworth Editions 1998)

Russell E, *Reading Embodied Citizenship* (Rutgers University Press 2011)

Schlink B, The Concept of Human Dignity: Current Usages, Future Discourses. in C McCrudden (ed.) *Understanding Human Dignity* (OUP 2014)

Schunk D, *Learning Theories: An Educational Perspective* (6th edn, Pearson 2012)

Sen A, *The Idea of Justice* (Penguin Books 2010)

Shakespeare T, *Disability Rights and Wrongs* (1st, Routledge, Oxon 2006).

Smith J. et.al. *Interpretative Phenomenological Analysis: Theory, Method and Research* (1st edn, Sage 2009)

Stiker H.J, *A History of Disability* (University of Michigan 1999)

Stoddard Holmes M, *Fictions of Affliction Physical Disability in Victorian Culture* (University of Michigan Press 2004)

Stolker C, *Rethinking the Law School: Education, Research, Outreach and Governance* (Cambridge University Press, 2014)

Stone D, *The Disabled State* (1st edn, Temple University Press 1986)

Talvin K, Art Education as Cultural Jamming Public Pedagogy in Visual Culture. in Sandlin and others (eds), *Handbook of Public Pedagogy: Education and Learning Beyond Schooling* (Routledge 2010)

Terzi L, Afterword: Difference, equality and the ideal of inclusion in education in L

Terzi (ed), *Special Educational Needs: A New Look* 2nd ed (Bloomsbury Academic 2013)

Terzi L, What metric for justice for disabled people? Capability and disability. in H

Brighthouse and I Roebyns (eds), *Measuring Justice* (Cambridge University Press 2010)

Tibbitts FL, Evolution of Human Rights Education Models. in M Bajaj (ed), *Human Rights Education: Theory, Research, Praxis* (University of Pennsylvania Press 2017)

Trömel S, A Personal Perspective on the Drafting History of the United Nations

Convention on the Rights of Persons with Disabilities. in G Quinn and L

Waddington (eds), *European Yearbook of Disability Law* (Intersentia 2009) 117

Tuebner G, *Autopoietic Law - A New Approach to Law and Society* (Walter de Gruyter and Co 1987)

Unger RM, *The Critical Legal Studies Movement: Another time, A Greater Task* (3rd edn, Verso 2015) 9

Van dijk TA, Critical Discourse Analysis. in Schiffrin and others (eds), *The Handbook of Discourse Analysis* (Blackwell Publishers 2001)

Vanhala L, *Making Rights a Reality? Disability Rights Activists and Legal Mobilization* (Cambridge University Press 2011)

Varney, E 'Disability and Information Technology: A Comparative Study in Media Regulation' 2013 Cambridge University Press, 221

Villiger M E, The Rules on Interpretation: Misgivings, Misunderstandings, Miscarriage? The 'Crucible' Intended by the International Law Commission. in E Cannizzaro(ed), *The Law of Treaties Beyond the Vienna Convention* (Oxford University Press 2011) 105-122

Warnock M, Special Educational Needs: A New Look. in L Terzi (ed), *Special Educational Needs: A New Look* 2nd ed (Bloomsbury Academic 2013) 18-19

Webster, Webster's Reference Library Concise Edition Dictionary and Thesaurus (Geddes & Grosset 2002) 139

Wheeler S and Thomas P, Socio-Legal Studies. in D Hayton (ed), *Law's Future(s)* (Hart Publishing 2000) 267-274

Williams RJ Jr, Change and Stability in Values and Value Systems: A Sociological Perspective. in M Rokeach (ed), *Understanding Human Values: Individual and Societal* (The Free Press 1979)

Zembylas M, Emotions, Critical Pedagogy, and Human Rights Education. in M Bajaj (ed), *Human Rights Education: Theory, Research, Praxis* (University of Pennsylvania Press 2017) 74

Websites

Aalaei A, 'NOTES The Americans With Disabilities Act and Law School Accommodations: Test Modifications Despite Anonymity' [2007] XL(2) Suffolk University Law Review <http://suffolklawreview.org/wp-content/uploads/2007/03/Aalaei_Note_FINAL.pdf> accessed 2 June 2017 436

Age UK, 'Disability Living Allowance' (Information and Advice, Jun 21 2018) <<https://www.ageuk.org.uk/information-advice/money-legal/benefits-entitlements/disability-living-allowance/>> accessed 28 June 2018

Aquinas T translated by McInerny R, 'Commentary on the Sentences' (*Http://dhspriority.org*, 1998) <<http://dhspriority.org/thomas/Sentences.htm#1>> accessed 21 October 2016

Al Jadir R & Pring J, 'Brexit 'would have dire consequences for disabled people' (*disabledgo.com*, 16 Mar 2016) <<http://www.disabledgo.com/blog/2016/03/brexit-would-have-dire-consequences-for-disabled-people/#.WMLWCtKLSUk>> accessed 10 March 2017.

Anglia Ruskin University, 'Law LLB (Hons) ' (*Anglia Ruskin University*, 2017) <<https://www.anglia.ac.uk/study/undergraduate/law>> accessed 26 March 2018

“Annotated review of European Union law and policy with reference to disability,” ANED, <http://www.disability-europe.net/> referenced in Papworth Trust, 'Brexit: What next for disabled people?' (*papworthtrust.org.uk*, September 26th 2016) <<http://online.flipbuilder.com/afjd/wpxb/>> accessed 21 March 2017.

Arts and Humanities Research Council, 'Collaborative Doctoral Partnerships' (*www.ahrc.ac.uk*, 2015) <<http://www.ahrc.ac.uk/funding/opportunities/archived-opportunities/collaboratedoctoralpartnerships/>> accessed 28 March 2017.

Arts and Humanities Research Council, 'Doctoral Training Partnerships' <<http://www.ahrc.ac.uk/skills/phdstudents/fundingandtraining/dtps/>> accessed 30 May 2017

Atherton Godfrey Solicitors, 'Universities could face disability discrimination claims under the Equality Act 2010', <<http://www.athertongodfrey.co.uk/universities-could-face-disability-discrimination-claims-under-the-equality-act-2010/>> accessed 3 February 2017.

Baker K, 'How might a Brexit affect students' law degrees?' (*www.theguardian.com*, 11 March 2016) <<https://www.theguardian.com/law/2016/mar/11/how-might-a-brexit-affect-students-law-degrees>> accessed 20 March 2017.

Baumberg Geiger B, 'Benefit 'myths'? The accuracy and inaccuracy of public beliefs about the benefits system' [2016] CASE/199(0) Centre for Analysis of Social Exclusion London School of Economics <<http://sticerd.lse.ac.uk/dps/case/cp/casepaper199.pdf>> accessed 28 June 2018

BBC News Cornwall, 'Councillor considers resignation over disabled comment' (*bbc.co.uk*, 27 February 2013) <<http://www.bbc.co.uk/news/uk-england-cornwall-21594109>> accessed 1 August 2017

British Paralympic Association, 'History in detail' <<http://paralympics.org.uk/games/ludwig-guttman>> accessed 24 January 2017.

British Pathé, 'Lady Hoare's Thalidomide Children's Party (1963)' (*youtube.com*, 1963 (uploaded 13 April 2014)) <<https://www.youtube.com/watch?v=xZyGHebG0IA>> accessed 22 May 2017

Browne M Ann & Blanchfield L, 'United Nations Regular Budget Contributions: Members Compared, 1990-2010' (*www.fas.org*, 15 January 2013) <<https://www.fas.org/sgp/crs/row/RL30605.pdf>> accessed 5 August 2016

Bunce L and others, 'The student-as-consumer approach in higher education and its effects on academic performance' [2016] *Studies in Higher Education* <DOI: 10.1080/03075079.2015.1127908> accessed 30 May 2017 3

Cambridge University Press Cambridge Dictionary, 'them and us' (*dictionary.cambridge.org*, 2018) <<https://dictionary.cambridge.org/dictionary/english/them-and-us>> accessed 22 March 2018

Campbell J, 'A 'go it alone' Britain will turn the clock back for disabled people' (*theguardian.com*, 7 June 2016) <<https://www.theguardian.com/society/2016/jun/07/go-it-alone-britain-turn-clock-back-for-disabled-people>> accessed 10 March 2017.

Campbell J, 'Developing our Image - Who's in control?' (*Disability Studies Leeds*, paper presented at the "Cap-in-Hand" conference, February 1990) <<http://disability-studies.leeds.ac.uk/files/library/Campbell-DEVELOPING-OUR-IMAGE.pdf>> accessed 12 January 2016.

Centre for Excellence in Universal Design, 'The 7 Principles' (*universaldesign.ie*, 2014) <<http://universaldesign.ie/What-is-Universal-Design/The-7-Principles/>> accessed 14 November 2017

Cesinger B, 'Discussion Paper 01-2011 Career and Success: A Literature Review' (*dcc-selbstaendig.de*, 2011) <http://www.dcc-selbstaendig.de/WP/WP_01_2011.pdf> accessed 11 July 2017

Churchill W 'The End of the Beginning' (Churchill-society-london.org.uk, 10 November, 1942) <<http://www.churchill-society-london.org.uk/EndoBegn.html>> accessed 13 March 2018

Clark G, 'Higher education: student support - changes to Disabled Students' Allowances (DSA)' (*Department for Business, Innovation & Skills The Rt Hon Greg Clark MP*, 15 September 2014) <<https://www.gov.uk/government/speeches/higher-education-student-support-changes-to-disabled-students-allowances-dsa--2>> accessed 18 October 2016.

Close M, 'Timeline History of the Disabled People's Movement' (Disability Equality 2011) <<http://www.disability-equality.org.uk/uploads/files/fb979acea0dfe4ec8163fc610ffcf305.pdf>> accessed 23 October 2014.

Comic Relief, 'Helping Hand' (*youtube.com*, 1995 (Uploaded Aug 2008)) <https://www.youtube.com/watch?v=ozTBcB_qwag> accessed 22 May 2017

Comic Relief, 'Our history timeline' (*comicrelief.com*, 2017) <<https://www.comicrelief.com/who-we->

are/history/timeline?date_filter%5Bvalue%5D%5Byear%5D=1994>accessed 22

May 2017

Communication No. 1/2010 Szilvia Nyusti, Péter Takács and Tamás Fazekas v Hungary [2010] 9 C 1 (CRPD Committee) <<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Jurisprudence.aspx>> last accessed 6th May 2014

Communication No. 4/2011 Zsolt Bujdosó and five others v. Hungary [2011] 10 C 1 (CRPD Committee) <<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Jurisprudence.aspx>> accessed 6th May 2014

Council of Europe, 'European Court of Human Rights' <http://www.coe.int/t/democracy/migration/bodies/echr_en.asp> accessed 3 February 2017.

Council of Europe, 'Our Member States' <<http://www.coe.int/en/web/about-us/our-member-states>> accessed 3 February 2017

Crown prosecution service, 'Mentally Disordered Offenders' (CPS, 6 June 2017) <http://www.cps.gov.uk/legal/l_to_o/mentally_disordered_offenders/index.html> accessed 6 June 2017

De Montfort University, 'Employment Law' (*Courses*, © 2018)
<<http://www.dmu.ac.uk/study/business-and-law/undergraduate-modules/third-year/employment-law.aspx>> accessed 26 March 2018

Department for business innovation and skills, " (Widening participation in higher education).

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/443986/Widen-Partic-HE-2015s.pdf> accessed 13 November 2015 Tables 1, 2, 3a and 3b.

Department for Education, 'National Statistics Participation rates in higher education: 2006 to 2016 (Table C in Tables: SFR47/2017 Document)' (*gov.uk*, 28 September 2017) <<https://www.gov.uk/government/statistics/participation-rates-in-higher-education-2006-to-2016>> accessed 14 November 2017

Department of Health, 'Valuing People: A New Strategy for Learning Disability for the 21st Century' (learningdisabilities.org.uk 2001)
<<http://www.learningdisabilities.org.uk/help-information/about-learning-disabilities/definition-learning-disability/>> accessed 27th February 2014

Directgov, 'Public sector organisations and 'Disability rights Schemes' (*The National Archive*, 10 April 2011)
<http://webarchive.nationalarchives.gov.uk/+http://www.direct.gov.uk/en/DisabledPeople/RightsAndObligations/DisabilityRights/DG_10038105> accessed 14 March 2018

Disability Action Alliance, 'About Us – Alliance Mission Statement' (*disabilityactionalliance.org*, 2017) <<http://disabilityactionalliance.org.uk/about-us/>> accessed 22 May 2017

Disability Action Alliance, 'Disability Awareness for Children' (*disabilityactionalliance.org*, 29 March 2016) <<http://disabilityactionalliance.org.uk/resources/disability-awareness-for-children/>> accessed 22 May 2017

Disability Rights UK, 'Coleman v Attridge Law & Stephen Law - C-303/06', <<https://www.disabilityrightsuk.org/coleman-v-attridge-law-stephen-law-c-30306>> accessed 13 March 2017.

Disability Rights UK, 'Telling people you're disabled: clear and easy guide for students' (*Disabilityrightsuk.org*, 15 May 2017) <<https://www.disabilityrightsuk.org/telling-people-you%E2%80%99re-disabled-clear-and-easy-guide-students>> accessed 2 August 2018

DisabledGo, 'About Us' <<http://www.disabledgo.com/about-us>> accessed 15 May 2017

DisabledGo, 'Access Icons' <<http://www.disabledgo.com/our-icons>> accessed 15 May 2017

DisabledGo, 'Our Work - How we do it' <<http://www.disabledgo.com/our-work>> accessed 15 May 2017

Dixon H, 'The move from DLA to PIP: Controversial Government plans take effect' (The Telegraph, 08 Apr 2013) <<https://www.telegraph.co.uk/news/politics/9978820/The-move-from-DLA-to-PIP-Controversial-Government-plans-take-effect.html>> accessed 28 June 2018

Easton M, 'Do disability rights cost too much?' (*bbc.co.uk*, 17 January 2012) <<http://www.bbc.co.uk/news/uk-16596799>> accessed 1 August 2017

ECtHR, 'The Court in brief' (*ecbr.coe.int*, 2017) <http://www.echr.coe.int/Documents/Court_in_brief_EN_G.pdf> accessed 7 April 2017.

EHRC, 'Equality and Human Rights Commission's response to the report of the House of Lords Select Committee on the Equality Act 2010 and Disability: the impact on disabled people' (*parliament.uk*, 2016) <<https://www.parliament.uk/documents/lords-committees/equality-act/EHRC-reponse-to-Equality-Act-Report.pdf>> accessed 10 March 2017

EHRC, 'Public Sector Equality Duty' (*equalityhumanrights.com*, 20 Feb 2017) <<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty>> accessed 3 November 2017.

ENIL, 'ENIL Against BREXIT' (*enil.eu*, 7 April 2016) <<http://enil.eu/news/enil-against-brexit/>> accessed 20 March 2017.

Enns H, 'The Role of Organizations of Disabled People: A Disabled Peoples' International Discussion Paper' (<http://www.independentliving.org>, 25 July

2016) <<http://www.independentliving.org/docs5/RoleofOrgDisPeople.html>>

accessed 25 July 2016

EPR, 'The EU Disability Strategy 2010-2020 Analysis paper' (*epr.eu*, 2011) <http://www.epr.eu/images/EPR/documents/policy_documents/The%20EU%20Disability%20Strategy%20Analysis%20paper.pdf> accessed 28 March 2017.

EPSRC, 'Doctoral Training Partnership (DTP)' <<https://www.epsrc.ac.uk/skills/students/dta/>> accessed 30 May 2017

Equality and Human Rights Commission, 'Can human rights ever be restricted?' (*How are your rights protected?*, 04 May 2016) <<https://www.equalityhumanrights.com/en/what-are-human-rights/how-are-your-rights-protected>> accessed 2 October 2018

Equality and Human Rights Commission, 'What do we mean by reasonable?' (*Equality and Human Rights Commission*, 12 Jul 2016) <<https://www.equalityhumanrights.com/en/multipage-guide/what-do-we-mean-reasonable>> accessed 12 January 2018

Equinet European Network of Equality Bodies, 'CJEU clarifies the concept of disability' (*Equineteurope.org*, 18 April 2013) <<http://www.equineteurope.org/CJEU-clarifies-the-concept-of>> accessed 13 July 2018

EUROPA, 'Court of Justice of the European Union (CJEU)' (*europa.eu*, 4 April 2017) <http://europa.eu/european-union/about-eu/institutions-bodies/court-justice_en> accessed 4 April 2017.

Europa, 'Web Accessibility' (*DIGITAL SINGLE MARKET Digital Economy & Society*, 09 January 2017) <<https://ec.europa.eu/digital-single-market/en/web-accessibility>> accessed 31 March 2017.

European Commission, 'CLLD - A useful approach for ESF' (*ec.europa.eu*, 13 September 2016) <<http://ec.europa.eu/esf/transnationality/content/clld-useful-approach-esf>> accessed 28 March 2017.

European Commission, 'COM(91) 350 final' (*europa.eu*, 1991) <http://europa.eu/rapid/press-release_P-91-70_en.htm> accessed 3 November 2017.

European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe' (*eur-lex.europa.eu*, 15 November 2010) <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0636:FIN:en:PDF>> accessed 28 March 2017.

European Commission, 'The European Day for People with Disabilities' (*europa.eu*, 3 December 1996) <http://europa.eu/rapid/press-release_IP-96-1114_en.htm> accessed 28 March 2017.

Equality and human rights commission, 'Are disabled people at a disadvantage?' (*www.equalityhumanrights.com*, 21st July)

2016) <<https://www.equalityhumanrights.com/en/multipage-guide/are-disabled-people-disadvantage>> accessed 20 February 2017

Equality UK, 'Equality Time Line' <<http://www.equalityuk.org/time-line/>> accessed 23 October 2014.

Equal Rights Trust, 'The Ideas of Equality and Non-Discrimination: Formal and Substantive Equality' (equalrightstrust.org, November 2007) <<http://www.equalrightstrust.org/ertdocumentbank/The%20Ideas%20of%20Equality%20and%20Non-discrimination,%20Formal%20and%20Substantive%20Equality.pdf>> accessed 31 October 2016.

Fredman S & Young A, 'The Great Repeal Bill and Equality Rights' (*ohrh.law.ox.ac.uk*, 2017) <<http://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/2017/02/Great-Repeal-Bill-and-Equality-Rights.pdf>> accessed 13 March 2017.

Goodley D, 'Brexit and the logics of ableism' (*speri.dept.shef.ac.uk*, 26 October 2016) <<http://speri.dept.shef.ac.uk/2016/10/26/brexit-and-the-logics-of-ableism/>> accessed 10 March 2017.

Gov, 'Modern Slavery Act 2015' (*Gov.uk*, 14 March 2016) <<https://www.gov.uk/government/collections/modern-slavery-bill>> accessed 21 August 2017

Gov.uk, 'Legal aid' (*gov.uk*, 2017) <<https://www.gov.uk/legal-aid/eligibility>> accessed 22 September 2017

Gov.uk, 'Personal Independence Payment (PIP)' (*Benefits*, 28 June 2018) <<https://www.gov.uk/pip>> accessed 28 June 2018

Government, 'Disability rights' (*gov.uk*, 2017) <<https://www.gov.uk/rights-disabled-person/further-help-and-advice>> accessed 22 May 2017

Government, 'Disability rights' (*gov.uk*, 2017) <<https://www.gov.uk/browse/disabilities/rights>> accessed 22 May 2017

Government, 'Discrimination: your rights' (*gov.uk*, 2017) <<https://www.gov.uk/discrimination-your-rights>> accessed 22 May 2017

Government, 'Equality Act 2010: guidance' (*gov.uk*, 2017) <<https://www.gov.uk/guidance/equality-act-2010-guidance>> accessed 22 May 2017

Greater Manchester Coalition of Disabled People, 'A Brief History Of Disabled People's Self-Organisation' (*contenthistoricensland.org.uk*, November 2010) <<https://content.historicensland.org.uk/content/docs/research/brief-history-disabled-peoples-self-organisation.pdf>> accessed 8 August 2017

Grove J, 'Disability cuts lead to universal lecture capture policy' <<https://www.timeshighereducation.com/news/disability-cuts-lead-to-universal-lecture-capture-policy>> accessed 26 May 2017

Hilly L & Martin R, 'Global Perspectives on Human Rights: Oxford Human Rights Hub Blog (2nd edition)' (*obrhlaw.ox.ac.uk*, 2014-

2015) <<http://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/2014/04/9811-OxHRH-E-Book-2015-digital-single.pdf>> accessed 2 November 2017

Hirsch A and Lagnado A, 'Study shows more disabled students are dropping out of university - Increasing numbers of disabled students are dropping out What are universities doing wrong?' <<https://www.theguardian.com/education/2010/may/25/diabled-student-drop-out-university-increase>> accessed 3 February 2017

HM government, 'Prime Minister's Commons statement on triggering Article 50' (Plan for Britain, 29 MARCH 2017) <<https://www.planforbritain.gov.uk/?gclid=CPqJ1-72gNMCFWcq0wodfS8N-g>> accessed 31 March 2017.

Holy Bible New International Version, 'Pharaoh's Dream' (*Biblegateway.com*, 2011) <<https://www.biblegateway.com/passage/?search=Genesis+41>> accessed 5 August 2016

Honneth A, 'Reification: A Recognition-Theoretical View', *The Tanner Lectures on Human Values* (University of California, Berkeley March 14–16, 2005) <http://tannerlectures.utah.edu/documents/a-to-z/h/Honneth_2006.pdf> accessed 19 September 2017

House of Lords Hansard, 'Brexit: Disabled People' Volume 778 (*hansardparliament.uk*, 02 February) <<https://hansard.parliament.uk/lords/2017-02-02/debates/BF5C6387-2D05-403D-A0E8-ABB6BA4E4DF6/BrexitDisabledPeople>> accessed 20 March 2017.

House of Lords, 'Select Committee on the Equality Act 2010 and Disability The Equality Act 2010: the impact on disabled people Report of Session 2015-16 HL Paper 117' (*www.parliament.uk*, 24 March 2016) <<https://www.publications.parliament.uk/pa/ld201516/ldselect/ldseqact/117/11702.htm>> accessed 27 February 2017

Hughes G and Robinson P, 'Photonote evaluation: aiding students with disabilities in a lecture environment' <<http://www.cl.cam.ac.uk/~pr10/publications/assets07a.pdf>> accessed 26 May 2017

Hunt J, 'A revolutionary group with a revolutionary message' (*disability.co.uk*/, 2001) <<http://pf7d7vi404s1dxh27mla5569.wpengine.netdna-cdn.com/files/library/Hunt-J-a-revolutionary-group-with-a-revolutionary-message.pdf>> accessed 8 August 2017

IEWM, 'Lee's Box of Trix - Everyday Gadgets - Get Connected' <https://www.youtube.com/watch?v=noSLzV_FAjs> accessed 2 May 2017

Intellectual Property Office, 'Exceptions to copyright: Education and Teaching' (*gov.uk*, October 2014) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/375951/Education_and_Teaching.pdf> accessed 10 July 2017

Jisc, 'Supporting an inclusive learner experience in higher education: Looking at elements of the student experience where institutional practices and policies can make the learner experience much more inclusive'

<<https://www.jisc.ac.uk/guides/supporting-an-inclusive-learner-experience-in-higher-education>> accessed 11 April 2017.

Karnad A, 'Student Use of Recorded Lectures: A report reviewing recent research into the use of lecture capture technology in higher education, and its impact on teaching methods and attendance' <http://eprints.lse.ac.uk/50929/1/Karnad_Student_use_recorded_2013_author.pdf> accessed 26 May 2017

Kings College London, 'LLB Law' (*Law*, October 2017) <<https://www.kcl.ac.uk/study/assets/PDF/cma/undergraduate/Law-LLB.pdf>> accessed 26 March 2018

Kingston University London, 'Year 3 Optional Module Employment Law' (*Law LLB(Hons) with professional experience*, 26 March 2018) <<http://www.kingston.ac.uk/undergraduate-course/law-llb/>> accessed 26 March 2018

Krishnadas J, 'Written evidence from the Community Legal Outreach Collaboration, Keele, (CLOCK), Keele University (LAS 68)' (*Impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012*, 13 May 2014) <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidence-document/justice-committee/impact-of-changes-to-civil-legal-aid-under-laspo/written/8970.html>> accessed 22 March 2018

Kroeger Dr S, '13th Annual Disability Lecture the Power of Design: Exclusion or Inclusion?' <<http://sms.cam.ac.uk/media/2227966>> accessed 15 May 2017

Lawson A, Different types of reasonable? Critical reflections on reasonable accommodation and progressive realisation in the UN CRPD, 3rd April 2014, Maastricht University, Equal Rights and Accessible Environments: The UN CRPD and EU Disability Law and Policy, <<http://mediasite.unimaas.nl/Mediasite/Play/113519bbc41f4955a102531b7776e78a1d>> accessed 4 July 2014.

Lawson A, Quinn G and Jones H C 'UK Disabled People and their Families – Stronger and Safer inside the EU' (*disabilityrightsuk.org*, 6 June 2016). <<https://www.disabilityrightsuk.org/sites/default/files/word/brexitjune62016.docx>> accessed 13 March 2017.

Leek Post and Times, 'Advice on dementia aid is being offered by the Park Medical Patient Participation Group in Leek' <<http://www.leek-news.co.uk/advice-dementia-aids-latest-information-offered/story-29177683-detail/story.html>> accessed 2 May 2017

Leonard Cheshire, 'Rights and reality Disabled people's experiences of accessing goods and services Executive Summary' (*Leonardcheshire.org*, 2010) <<https://www.leonardcheshire.org/sites/default/files/Rights%20and%20reality%20-%20executive%20summary.pdf>> accessed 22 May 2017

London Metropolitan University, 'Employment and Equality Law' (*LLB Law - (Hons)*, 26 March 2018) <<http://www.londonmet.ac.uk/courses/undergraduate/llb-law---hons/>> accessed 26 March 2018

London School of Economic, 'LL257 Labour Law' (*Calendar*, 2017/18 session) <http://www.lse.ac.uk/resources/calendar/courseGuides/LL/2017_LL257.htm> accessed 26 March 2018

LSE, 'LL105 Half Unit Property I' (*lse.ac.uk*, 2017) <http://www.lse.ac.uk/resources/calendar/courseGuides/LL/2017_LL105.htm> accessed 29 January 2018

Lukács G, 'History & Class Consciousness' (*Marxists.org*, 1967) <<https://www.marxists.org/archive/lukacs/works/history/hcc05.htm>> accessed 19 September 2017

M Mason and R Rieser, 'Altogether Better (from 'Special Needs' to Equality in Education)' (*Worldofinclusion.com*, 1994) <<http://www.worldofinclusion.com/res/altogether/AltogetherBetter.pdf>> accessed 26 March 2018

Mcnaught A, 'DSA changes - short term purgatory for long term paradise?' (Chartered Institute of Library and Information Professionals, 01 February 2017) <<http://www.cilip.org.uk/blog/dsa-changes-short-term-purgatory-long-term-paradise>> accessed 2 February 2017.

Middlesex University London, 'Modules' (*LLB Law*, 26 March 2018) <<http://www.mdx.ac.uk/courses/undergraduate/llb>> accessed 26 March 2018

NatCen, 'British Social Attitudes 2012' (*British Social Attitudes*, 2012) <<https://docs.google.com/spreadsheets/d/1IYdiUVEVeZrPB2-v4gaMmHG7zN8veGfHacvtWTsjOuE/edit#gid=0>> accessed 1 August 2017

National Co-ordinating Centre for Public Engagement, 'What is public engagement?'
<<https://www.publicengagement.ac.uk/explore-it/what-public-engagement>> accessed 8 May 2017

National Co-ordinating Centre for Public Engagement, 'REF 2014'
<<https://www.publicengagement.ac.uk/explore-it/what-are-policy-drivers/measuring-impact/ref-2014>> accessed 8 May 2017

National Co-ordinating Centre for Public Engagement, 'Target Audience: Deepening your understanding'
<https://www.publicengagement.ac.uk/sites/default/files/publication/target_audience_deepening_your_understanding.pdf> accessed 8 May 2017

National Co-ordinating Centre for Public Engagement, 'Why Engage'
<<https://www.publicengagement.ac.uk/plan-it/why-engage>> accessed 8 May 2017

Newman J, 'Discourse 7 Knowledge Viewed in Relation to Professional Skill' (*Newman Reader-Works of John Henry Newman*, 2007) <<http://www.newmanreader.org/works/idea/discourse7.html>> accessed 19 January 2016.

OFFA, 'How to produce an access agreement for 2016-17'
<<https://www.offa.org.uk/wp-content/uploads/2015/02/How-to-produce-an-access-agreement-for-2016-17-PDF.pdf>> accessed 30 January 2017.

Office for Disability Issues, 'Office for Disability Issues' (*gov.uk*, 2017)
<<https://www.gov.uk/government/organisations/office-for-disability-issues>>
accessed 22 May 2017

Office For Fair Access, 'Access agreement monitoring tells a national success story, says OFFA' <<https://www.offa.org.uk/press-releases/access-agreement-monitoring-tells-a-national-success-story-says-offa/>> accessed 30 January 2017.

Oxford Brookes university, 'Module Descriptions for Law' (*Courses*, © 2018) <<https://www.brookes.ac.uk/studying-at-brookes/courses/undergraduate/supporting-materials/module-descriptions-for-law/>> accessed 26 March 2018

Palmer E, Lomer Dr S and Bashliyska I 'University of Northampton Overcoming barriers to student engagement with Active Blended Learning' (*northampton.ac.uk*, May 2017) <<https://www.northampton.ac.uk/ilt/wp-content/uploads/sites/2/2017/05/Student-Engagement-with-ABL-Interim-Report-May-2017-v2.pdf>> accessed 10 July 2017

Papworth Trust, 'Brexit: What next for disabled people?' (*papworthtrust.org.uk*, September 26th 2016) <<http://online.flipbuilder.com/afjd/wpxb/>> accessed 20 March 2017.

Parliament, 'Higher Education and Research Act 2017' <<http://services.parliament.uk/bills/2016-17/highereducationandresearch.html>> accessed 12 May 2017

Parliament, 'Higher Education and Research Bill Written evidence submitted by Bournemouth University (HERB 03)' <<https://www.publications.parliament.uk/pa/cm201617/cmpublic/HigherEducationandResearch/memo/HERB03.htm>> accessed 12 May 2017

Parliament, 'Higher Education and Research Bill Written evidence submitted by Kent Union (HERB 55)'

<<https://www.publications.parliament.uk/pa/cm201617/cmpublic/HigherEducationandResearch/memo/HERB55.htm>> accessed 12 May 2017

Parliament, 'Higher Education and Research Bill Written evidence submitted by the Open University (OU) (HERB 13)' <<https://www.publications.parliament.uk/pa/cm201617/cmpublic/HigherEducationandResearch/memo/HERB13.htm>> accessed 12 May 2017

Parliament, 'Higher Education and Research Bill Written evidence submitted by UNISON (HERB 34)'

<<https://www.publications.parliament.uk/pa/cm201617/cmpublic/HigherEducationandResearch/memo/HERB34.htm>> accessed 12 May 2017

Political Studies Association, 'Teaching Excellence Framework (TEF)'

<<https://www.psa.ac.uk/sites/default/files/TEF%20Bulletin.pdf>> accessed 23 May 2017

Priestley M & Rabiee P, 'Building Bridges: Disability and Old Age' <<http://disability-studies.leeds.ac.uk/research/building-bridges-disability-and-old-age/>> accessed 26th January 2015.

Pring J, 'Brexit vote: Fear and uncertainty over impact of EU exit' (*disabilitynewsservice.com*, 30 June 2016) <<http://www.disabilitynewsservice.com/brexit-vote-fear-and-uncertainty-over-impact-of-eu-exit/>> accessed 10 March 2017.

Pring J, 'EU laws 'have played crucial role' in fight for disability rights' (*disabilitynewsservice.com*, 9 June 2016) <<http://www.disabilitynewsservice.com/eu-laws-have-played-crucial-role-in-fight-for-disability-rights/>> accessed 21 March 2017.

Pring J, 'More disabled people add their voices to Brexit opposition' (*disabledgo.com*, 25 Mar 2016) <<http://www.disabledgo.com/blog/2016/03/more-disabled-people-add-their-voices-to-brexit-opposition/#.WMLVh9LyUk>> accessed 10 March 2017.

Pring J, 'Outrage over 'horrifying' and 'miserable' plans to scrap Human Rights Act' (*disabilitynewsservice.com*, 19 May 2016) <<http://www.disabilitynewsservice.com/outrage-over-horrifying-and-miserable-plans-to-scrap-human-rights-act/>> accessed 21 March 2017.

Queen, 'Queen's Speech 2016' (*gov.uk*, 18 May 2016) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/524040/Queen_s_Speech_2016_background_notes_.pdf> accessed 21 March 2017.

Quinn G & Degener T 'Human Rights and Disability: The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability' (www.ohchr.org, 2002) <<http://www.ohchr.org/Documents/Publications/HRDisabilityen.pdf>> accessed 10 October 2016

RNIB Bookshare, 'Request and share' <<https://www.rnibbookshare.org/cms/requestandshare>> accessed 30 May 2017

RNIB Bookshare, 'RNIB UK education collection for print-disabled learners including those with dyslexia or who are blind or partially sighted' <<https://www.rnibbookshare.org/cms/>> accessed 11 April 2017

RNIB Bookshare, 'Who qualifies?' <<https://www.rnibbookshare.org/cms/bookshare-me/who-qualifies>> accessed 30 May 2017.

Roberts E, 'When others speak for you, you lose' (Http://www.oac.cdlib.org/, January 1983) <http://www.oac.cdlib.org/view?docId=hb3j49n6hw&brand=oac4&doc.view=entire_text> accessed 26 August 2016

Scope 2016, 'End the awkward: The basics' (*www.scope.org.uk*, 2016) <<http://www.scope.org.uk/end-the-awkward/the-basics>> accessed 4 October 2016

Scope, 'The Disability Discrimination Act 1995: The campaign for civil rights' (*youtube.com*, 2 November 2015) <<https://www.youtube.com/watch?v=dwP1xuZZFuY>> accessed 15 May 2017

Scope, 'The Disability Discrimination Act: Love on the front line' <<https://www.youtube.com/watch?v=jyVjeh5pKTk>> accessed 12th January 2018

Scope, 'The Disability Discrimination Act: Standing on the shoulders of giants' <<https://www.youtube.com/watch?v=PW009FHb5bc>> accessed 12th January 2018

Select Committee on Education and Skills, 'Third Report, Annex: A statistical analysis of Special Educational Needs ' (parliament.uk, July 2006) <<https://publications.parliament.uk/pa/cm200506/cmselect/cmmeduski/478/47811.htm>> accessed 13 March 2018

SLSA, 'About the SLSA' <<http://www.slsa.ac.uk/index.php/what-is-slsa>> accessed 30 May 2017

Smith A , *An Inquiry into the Nature and Causes of The Wealth of Nations* (The Electric Book Company Ltd London 1998)< <file:///S:/Downloads/Smith%20Adam-The%20Wealth%20of%20Nations.pdf>> accessed 1st September 2017. 151-152

Solicitors regulation authority, 'Academic Stage Handbook ' (*Academic stage of education and training*, July 2014) <<https://www.sra.org.uk/students/academic-stage.page>>accessed 6 June 2017

Soto Ruiz J, 'Legal Capacity of Persons with Disabilities in the light of The United Nations Convention on the Rights of Persons with Disabilities' (Google.co.uk, -) <<file:///S:/Downloads/LEGAL%20CAPACITY%20OF%20PERSONS%20WITH%20DISABILITIES%20IN%20THE.pdf>> accessed 17 February 2017

Southampton Solent University, 'What You'll Study' (*LLB Law - (Hons)*, 26 March 2018)<<https://www.solent.ac.uk/courses/undergraduate/llb-hons>> accessed 26 March 2018

SRA, 'A new route to qualification: the Solicitors Qualifying Examination' (*sra.org.uk*, 25 April

2017) <<https://www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page>> accessed 20 November 2017

SRA.” The Law Society, 'Entry trends' (*lawsociety.org.uk*, 2017) <<https://www.lawsociety.org.uk/Law-careers/Becoming-a-solicitor/Entry-trends/>> accessed 16 October 2017

Stammering law, 'Brexit and Equality Act 2010' (*stammeringlaw.org.uk*, January 2017) <<http://www.stammeringlaw.org.uk/proposed/brexit.htm>> accessed 10 March 2017.

Tascioglu E, 'Researching Law in Everyday Life of People with Mental Disabilities' (*Legalcapacity.org.uk*, 24 March 2017) <<http://www.legalcapacity.org.uk/everyday-decisions/researching-law-in-everyday-life-of-people-with-mental-disabilities/>> accessed 25 August 2017

The Complete University Guide, 'University Subject Table Law' (*thecompleteuniversityguide.co.uk*, 24 May 2017) <<https://www.thecompleteuniversityguide.co.uk/league-tables/rankings?s=law>> accessed 16 March 2018

The Law Society, 'Entry trends' (*lawsociety.org.uk*, 2017) <<https://www.lawsociety.org.uk/Law-careers/Becoming-a-solicitor/Entry-trends/>> accessed 2 October 2017

The National Committee of Inquiry into Higher Education, 'The Dearing Report (1997) Higher Education in the learning society' <<http://www.educationengland.org.uk/documents/dearing1997/dearing1997.html#07>> accessed 30 January 2017 Section 7.42

Thom J & Pountney M, 'About Tourettes Hero'
<<http://www.touretteshero.com/about/>> accessed 24th March 2015

Thomas L, 'Building student engagement and belonging in Higher Education at a time of change: final report from the What Works? Student Retention & Success programme'

<file:///S:/Downloads/what_works_final_report.pdf> accessed 16 May 2017.

Thomas L and others, 'Supporting student success: strategies for institutional change What Works? Student Retention & Success programme Summary Report' <file:///S:/Downloads/what_works_2_-_summary_report.pdf> accessed 16 May 2017

Turner C (The Telegraph), 'Oxford University apologises for 'everyday racism' advice which offended autistic people'
<<http://www.telegraph.co.uk/education/2017/04/29/oxford-university-apologises-everyday-racism-advice-offended/>> accessed 5 May 2017

UCAS, 'End of Cycle 2016 Data Resources DR3_023_01 Acceptances by subject group and disability' (UK domiciled) (*ucas.com*, 15 December 2016) <<https://www.ucas.com/file/84541/download?token=7VMwUL75>> accessed 13 November 2017

UCAS, 'End of Cycle 2016 Data Resources DR3_023_07 Acceptances by subject group and disability' (UK domiciled)' (*ucas.com*, 15 December 2016) <<https://www.ucas.com/file/84551/download?token=n0GJxQEP>> accessed 13 November 2017

UCAS, 'End of Cycle 2016 Data Resources DR3_023_03 Acceptances by subject group and disability (Applications through the main scheme and UK domiciled)' (*ucas.com*, 15 December 2016) <<https://www.ucas.com/file/84546/download?token=apPf1m2->> accessed 13 November 2017

UN, 'Frequently Asked Questions Declaration on the Rights of Indigenous Peoples' (*un.org*, 2007) <<http://www.un.org/esa/socdev/unpfii/documents/FAQsin digenousdeclaration.pdf>> accessed 23 October 2017

UN, 'From provisions to practice: implementing the Convention' (Enable.org) <<http://www.un.org/disabilities/default.asp?id=242>> accessed 4th March 2014

UN 'Status of Ratification Interactive Dashboard' <<http://indicators.ohchr.org/>> accessed 20th January 2017

UN, 'What is the difference between signing, ratification and accession of UN treaties?' <<http://ask.un.org/faq/14594>> accessed 20 January 2017.

UN Committee on the Rights of Persons with Disabilities, 'Jurisprudence' (*ohchr.org*, 17 August – 4 September 2015) <<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Jurisprudence.aspx>> accessed 13 March 2018

UNESCO, 'Convention against Discrimination in Education (CADE) 1960' (*Http://portal.unesco.org/*) <<http://portal.unesco.org/en/ev.php->

URL_ID=12949&URL_DO=DO_TOPIC&URL_SECTION=201.html> accessed
24 October 2016

UN Human Rights Office of the High Commissioner, 'Jurisprudence' (ohchr.org, 2018)
<juris.ohchr.org> accessed 1 March 2018

UN Treaty Collection, 'Convention on the Rights of Persons with
Disabilities' (*treaties.un.org*, 6 March
2018) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en> accessed 6 March 2018

UN Treaty Collection, '15. Convention on the Rights of Persons with Disabilities -
Signatories' (*un.org*, 15 January
2018) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en> accessed 15 January 2018

United Nations, 'Ad Hoc Committee on a Comprehensive and Integral International
Convention on Protection and Promotion of the Rights and Dignity of Persons with
Disabilities New York, 16-27 June 2003 NGO contributions to the elements of a
convention' (*www.un.org*, June 2003)
<http://www.un.org/esa/socdev/enable/rights/a_ac265_2003_crp13_add1.htm>
accessed 4 October 2016

United Nations, 'Committee on the Rights of Persons with Disabilities Eleventh
session –11 April 2014 General comment No 1 (2014) Article 12: Equal recognition
before the law ' (un.org, 19 May 2014) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf?OpenElement>>
accessed 17 February 2017

United Nations, 'Explanatory Note on Legal Capacity and Forced Interventions' (un.org, Undisclosed)
<www.un.org/esa/socdev/enable/rights/ahc8docs/ahc8idc1218ex.doc > accessed 17 February 2017

United Nations, 'Secretary-General Hails Adoption of Landmark Convention on Rights of People with Disabilities' (*Meetings coverage and Press releases*, 13 December 2006)
<<http://www.un.org/press/en/2006/sgsm10797.doc.htm>> accessed 21 March 18

United Nations, 'Towards a society for all: Long-term Strategy to Implement the World Programme of Action concerning Disabled Persons to the Year 2000 and Beyond' (UN Enable, 2003/4)
<<http://www.un.org/esa/socdev/enable/dislts00.htm>> accessed 16 January 2017

United Nations, 'UN Enable CRPD and Optional Protocol Signatures and Ratifications' (*Division for Social Policy Development*, November 2017)
<<http://www.un.org/disabilities/documents/maps/enablemap.jpg>> accessed 14 March 2018

University of Birmingham, 'LLB Law' (*Undergraduate Courses*, 26 March 2018)<<https://www.birmingham.ac.uk/undergraduate/courses/law/law-llb.aspx#CourseDetailsTab>> accessed 26 March 2018

University of Bristol, 'Unit information: Employment Law in 2019/20' (*Unit and Programme Catalogues*, © 2002-2016) <<https://www.bris.ac.uk/unit-programme-catalogue/UnitDetails.jsa?ayrCode=19%2F20&unitCode=LAWD30113>> accessed 27 March 2018

University of Bristol Law School, 'Brexit: Why there has never been a better time to study law' (*www.bristol.ac.uk*, 13 October 2016) <<http://www.bristol.ac.uk/law/news/2016/brexit-studying-law.html>> accessed 20 March 2017.

University of Cambridge, 'Labour Law Tripos 2017-18: Sarah Fraser-Butlin' (*Law*, 2017-06-14) <<https://sms.cam.ac.uk/media/2498197>> accessed 26 March 2018

University of Exeter, 'Law LLB' (*Undergraduate Study 2019 Courses* , 26 March 2018) <<http://www.exeter.ac.uk/undergraduate/degrees/law/law/#Programme-structure>> accessed 26 March 2018

University of Kent, 'Law - LLB (Hons)' (*Undergraduate Courses 2019*, 26 March 2018) <<https://www.kent.ac.uk/courses/undergraduate/177/law#structure>> accessed 26 March 2018

University of Leeds, 'Broadening: Expand your academic horizons' <<http://leedsforlife.leeds.ac.uk/Broadening/Index>> accessed 2 May 2017

University of Leeds, 'Disability Law Hub' <<http://www.law.leeds.ac.uk/research/disability-law-hub>> accessed 2 May 2017

University of Leeds, 'LAW3055 Disability Law' <<http://leedsforlife.leeds.ac.uk/Broadening/Module/LAW3055>> accessed 2 May 2017.

University of Leeds, 'The Disability Archive UK' (*Http://disability-studies.leeds.ac.uk*, 2017) <<http://disability-studies.leeds.ac.uk/library/>> accessed 10 July 2017

University of Leeds School of Law, 'LLB Law' (*law.leeds.ac.uk*, 2017) <<http://www.law.leeds.ac.uk/undergraduates/llb-law/>> accessed 19 June 2017

University of Leicester, 'Employment Law' (*Modules*, 26 March 2018) <<https://le.ac.uk/modules/lw3230>> accessed 26 March 2018

University of Lincoln, 'The Course' (*LLB Law Hons*, 26 March 2018) <<http://www.lincoln.ac.uk/home/course/lawlawub/>> accessed 26 March 2018

University of Manchester, 'LLB Law / Course details' (*Undergraduate Courses*, 26 March 2018) <<http://www.manchester.ac.uk/study/undergraduate/courses/2018/09672/llb-law/course-details/LAWS30272#course-unit-details>> accessed 26 March 2018

University of Northampton, 'Discrimination Law' (*Law LLB (Hons)*, c 2018) <<https://www.northampton.ac.uk/study/courses/law-llb-hons/>> accessed 26 March 2018

University of Northumbria Newcastle, 'Module Overview' (*Law LLB (Hons)*, © Copyright 2018) <<https://www.northumbria.ac.uk/study-at-northumbria/courses/law-llb-hons-uuslwz1/>> accessed 26 March 2018

University of Oxford, 'Options and Core Courses' (*Faculty of Law*, 26 March 2018) <<https://www.law.ox.ac.uk/admissions/options>> accessed 26 March 2018

University of Sheffield, 'LAW334 Employment Law' (*Programme Regulations Finder*, 26 March 2018) <<https://www.sheffield.ac.uk/programmeregulationsfinder/unit?code=LAW334&org=SHEFFIELD&start=29-Sep-1997&loc=SHEFFIELD&cal=SPR%20SEM&year=2017>> accessed 26 March 2018

University of Southampton, 'LAWS2026 Employment Law' (*Courses*, © 2018) <<https://www.southampton.ac.uk/courses/modules/laws2026.page>> accessed 26 March 2018

University of Surrey, 'Employment Law II - 2019/0' (*Course Catalogue 19/0*, 26 March 2018) <https://catalogue.surrey.ac.uk/2019-0/module/LAW3076?_ga=2.198459238.895701749.1521211905-1844826603.1521211905> accessed 26 March 2018

University of Sussex, 'Justice, Equality and Society' (*Law LLB (Hons)*, © 2018) <<http://www.sussex.ac.uk/study/undergraduate/courses/law/law-llb>> accessed 26 March 2018

University of Sussex, 'Law LLB (Hons)' (*Study with us*, Copyright © 2018) <<http://www.sussex.ac.uk/study/undergraduate/courses/law/law-llb>> accessed 26 March 2018

University of Sussex, 'The Mass Observation Archive', <<http://www.massobs.org.uk/>> accessed 31 January 2017.

University of Westminster, 'Law School' (*Westminster.ac.uk*, 2017) <<https://www.westminster.ac.uk/about-us/our-people/directory/bunbury-stephen>> accessed 19 June 2017

Vanhala Dr L, 'The Baring Foundation: Working Paper No 2 on Better Use of the Law by the Voluntary Sector: Framework for Better Use of the Law by the Voluntary Sector' (*baringfoundation.org.uk*, August 2016) <<http://baringfoundation.org.uk/wp-content/uploads/2016/07/Framework-for-better-use-of-law-WPaper2-1.pdf>> accessed 16 June 2017

Willetts D, 'Higher education: student support: changes to Disabled Students' Allowances (DSA)' (Department for Business, Innovation & Skills and The Rt Hon David Willetts, 7 April 2014) <<https://www.gov.uk/government/speeches/higher-education-student-support-changes-to-disabled-students-allowances-dsa>> accessed 18 October 2016.

Case Law

Chacón Navas v Eurest Colectividades SA (2006) C-13/05.

Coleman v Attridge Law and Another [2008] OJ 2 303/06.

Cordell v Foreign and Commonwealth Office UKEAT/0016/11/SM

Cox v Post Office (case no. 1301162/97)

Donovan v Rana [2014] 1Pe CR 23 (CA)

Drury v McGarvie [1993] SLT 987

FirstGroup PLC v Paulley [2014] COA EWCA Civ 1573 para. 50

*Hamilton v. Jamaica*___Communication No. 616/1995 7 July 1997
CCPR/C/60/D/616/1995

HK Danmark v Danske [2013] OJ 1 156/6.

Middletweed v Murray [1989] SLT 11

Pousson v British Telecom plc (2005 1 All ER (D) 34 (Aug) EAT).

Price v UK [2001] Application No. 33394/96 ECHR

Treaties

Treaty of Amsterdam

Treaty of Lisbon

Treaty of Nice

Acts/Conventions/Declarations/Directives/Resolutions

Abortion Act 1967

Child and Family Act 2014

Chronically Sick and Disabled Persons Act 1970

Convention Against Discrimination in Education 1960

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

Criminal Justice Act 2003

Disability Discrimination Act 2005

Declaration on the Rights of Disabled Persons 1975

Declaration on the Rights of Mentally Retarded Persons 1971

Directive of the European Parliament and of the Council on the accessibility of the websites and mobile applications of public sector bodies [2016] OJ 2 327/1 /1.

Draft Resolution II E/2003/26 Comprehensive and Integral International Convention to Protect and Promote the Rights and Dignity of Persons with Disabilities

Education Act 1944 cl 57 (3)

Education (Handicapped- Children) Act 1970 cl 2

Equality Act 2010

Equality Act 2010 Part 11 Advancement of Equality, Chapter 1, Public Sector Equality
Duty para. 149

European Charter of Fundamental Rights and Freedoms

Higher Education and Research Act 2017

Human rights of people with disabilities C.H.R. res. 1998/31, ESCOR Supp. (No. 3)
at 117, U.N. Doc. E/CN.4/1998/31 (1998).

ICESCR General Comment No. 5

ICESCR General Comment No. 13: The Right to Education (Art. 13) (1999)
Contained in Document E/C.12/1999/10 Para. 1

International Convention on the Elimination of All Forms of Racial Discrimination
1965

International Covenant on Civil and Political Rights 1966

International Covenant on Economic, Social and Cultural Rights

Mental Deficiency Act 1913

Mental Deficiency Act 1927

Mental Health Act 1959

National Assistance Act 1948

Optional Protocol to the Convention on the Rights of Persons with Disabilities

Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations [2007] OJ 2315/14/1.

Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 [2004] OJ 2 46/1.

Regulation (EU) No 181/2011 of The European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 [2011] OJ 2 55/1

Resolution of the Council and the Ministers for Education meeting within the Council of 31 May 1990 concerning integration of children and young people with disabilities into ordinary systems of education [1990] OJ 1 162/01

Salamanca Statement 1994

Special Educational Needs and Disability Act

Standard Rules on the Equalization of Opportunities for Persons with Disabilities
1994

The Human Rights Act 1998

The Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010,
SI 2010 No 432 1 Schedule 1

The Public Service Vehicles Accessibility Regulations 2000, SI 2000 No 1970.

UNESCO Recommendation concerning the Most Effective Means of Rendering
Museums Accessible to Everyone 14 December 1960

United Nations Convention on the Rights of Persons with Disabilities 2006

United Nations Declaration on Human Rights Education and Training 2011
A/HRC/RES/16/1

Universal Declaration of Human Rights 1948

Vienna Convention on the Law of Treaties 1969

World Plan of Action on Education for Human Rights and Democracy (The Montreal
Declaration) (1993)

Other

Alliance for Inclusive Education, *The Case for Inclusive Education The What, the Why and the How*

Alliance for Inclusive Education, *Advocacy and Training Toolkit*;

ANED Report by Ebersold S, Schmitt M José and Priestley M ‘Inclusive Education for young disabled people in Europe: Trends, Issues and challenges. A synthesis of evidence from ANED country reports and additional sources’ April 2011 Section 3.6.

Armitage R, A Pedagogy for Critical Citizenship, The 8th International Conference in Critical Management Studies University of Manchester, 10-12 July 2013.

Barnes C, ‘Emancipatory’ Disability Research: project or process? Public Lecture at City Chambers, Glasgow, on 24 October 2001

BATA, ‘The negative impact on disabled students of the introduction of a £200 levy on Disabled Student Allowances.’ October 2016

BEPE Update ‘Inclusive Design – a lasting Olympic and Paralympic Legacy’ April 2014.

Boland J A, ‘Embedding a civic engagement dimension within the higher education curriculum: a study of policy, process and practice in Ireland.’ (PhD, University of Edinburgh 2008)

Bowe F, "Who Represents Disabled People?" In 1980 World Congress Plenary Session Papers. Edited by Rehabilitation International, New York: Rehabilitation International, 1980.

Brocklehurst M, *Self And Place: A Critique Of The Boundaryless Career* (2003) Paper presented to the Critical Management Studies conference, University of Lancaster

Bunbury S 'School of Law Department of Academic Legal Studies LLB Disability Law' (2014-15 University of Westminster)

Caird J S, 'Legislating for Brexit: The Great Repeal Bill' (21st November 2016) [House of Commons Briefing Paper N7793].

Commission Decision of 21 December 2007 concerning the technical specification of interoperability relating to 'persons with reduced mobility' in the trans-European conventional and high-speed rail system [2008] OJ 2 64/74

Committee on Employment and Social Affairs Report on the implementation of the UN Convention on the Rights of Persons with Disabilities, with special regard to the Concluding Observations of the UN CRPD Committee 2016, 2015/2258(INI)

Committee on the Rights of Persons with Disabilities, 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention – Report of the Committee' October 2016

Crown Commercial Service 'A Brief Guide to the 2014 EU Public Procurement Directives' October 2016 s.20.1.

Department for Business Innovation And Skills, 'Disabled Students' Allowances Consultation: Equality Analysis' [2015] Higher Education 9.

Department for Business Innovation, And Skills 'Government Response Consultation on targeting funding for disabled students in Higher Education from 2016/17 onwards' [2015] Higher Education 16.

Department for Business Innovation and Skills 'Higher Education: Disabled Students' Allowances Consultation: Equality Analysis' December 2015.

Derksen, J, "Editorial Comment", *Challenger* 1 (July 1975)

Disability Rights Commission, *Evaluating the Impact of the Disability Rights Commission: Final Report*, September 2007

DWP, 'European Social Fund Operational Programme 2014-2020' [2015]

DWP, 'Fulfilling Potential: Making It Happen' July 2013

DWP, 'Fulfilling Potential: Making it Happen - Better Working with Disabled People: The Way Forward, The Government response to consultation findings' 18th January 2014.

DWP, 'Fulfilling Potential: Next Steps' September 2012

DWP 'Fulfilling Potential - Strategy Progress Update' 2014

DWP, 'Fulfilling Potential: The Discussions So Far' September 2012

Equality and Human Rights Commission, 'Higher Education and Research Bill, House of Lords,

Committee Stage - Advice for Parliamentarians on Amendments to Clause 9 and Clause 31' (Monday 9 January 2017)

Equality Challenge Unit, 'Managing reasonable adjustments in higher education' November 2010

Essomba M.A, Karatzia-Stavlioti E, Maitles H, and Zaliieskiene I. 2008. *Developing the conditions for education for citizenship in higher education (CiCe guidelines on the design of higher education courses)*. London: Children's Identity & Citizenship in Europe

European Commission 'Helios II European Guide of Good Practice: Towards Equal Opportunities for Disabled People' 1996

European Commission 'Helios II European Guide of Good Practice: Towards Equal Opportunities for Disabled People' 1996, Council Decision of 18 April 1988 establishing a second Community action programme for disabled people (Helios) (88/231 /EEC)

Hamer A-M, *Working Paper No 111- Journey from education to work* (DWP 2012)

Hobble S and Bolton P, 'House of Commons Library' [January 2016] Briefing Paper Number 7444 Reform of Disabled Students' Allowances in England

Horne A and Maer L, 'From the Human Rights Act to a Bill of Rights?' [2010] Key Issues for the New Parliament 2010 House of Commons Library Research.

Hosking D L, 'A Critical Study of European Union Law and Policy Related to Disability' (PhD, University of Leicester 2011)

House of Commons debate 10th October 2016 c.40.

House of Commons 'Notices of amendment given up to and including Tuesday 31 January 2017 European Union(Notification of Withdrawal) BILL' 31 January 2017.

House of Commons, 'Government Response to the House of Lords Select Committee Report on The Equality Act 2010: The impact on disabled people' [2016] Cm 9283 2

House of Lords House of Commons Joint Committee on Human Rights, 'The UN Convention on the Rights of Persons with Disabilities ' [2008] First Report of Session 2008-09

House of Lords and House of Commons, 'Joint Committee on Human Rights - The UN Convention on the Rights of Persons with Disabilities' First Report of Session 2008-9 [4th January 2009].

Intellectual property office, 'Exceptions to copyright: Accessible formats for disabled people' [October 2014].

Lang R. The Role of NGOs in the Process of Empowerment and Social Transformation of People with Disabilities. In Thomas M, Thomas MJ (Ed) Selected Readings in Community Based Rehabilitation Series 1, Bangalore, 2000

Lawson A, Equal Rights Trust Bob Hepple Award 2016 acceptance speech, 30 June 2016.

Lord, J E. and Brown R, The Role of Reasonable Accommodation in Securing Substantive Equality for Persons with Disabilities: The UN Convention on the Rights of Persons with Disabilities (2010). Available at SSRN: <https://ssrn.com/abstract=1618903> or <http://dx.doi.org/10.2139/ssrn.1618903>

Mcgowan A and Hanna P, 'How Video Lecture Capture Affects Student Engagement in a Higher Education Computer Programming Course: A Study of Attendance, Video Viewing Behaviours and Student Attitude' [2015] Paper presented at eChallenges 2015 IEEE Conference, Vilnius, Lithuania

Mor S, 'Imagining the Law - The Construction of Disability in the Domains of Rights and Welfare: The Case of Israeli Disability Policy' (J.S.D. Thesis, NYU School of Law November 2005)

National Council of Disabled Persons of Zimbabwe, "Outreach Program Project Description", Bulawayo, Ca., 1984.

National Institute Health and Care Excellence Guidance, 'Total hip replacement and resurfacing arthroplasty for end-stage arthritis of the hip Technology appraisal guidance' [26 February 2014] 34

Office for Disability Issues, *UK Initial Report on the UN Convention on the Rights of Persons with Disabilities* 2011

Office of The High Commissioner for Human Rights, 'United Nations Decade for Human Rights Education (1995-2004) Commission on Human Rights resolution 2002/74'

Pearson A 'A Comparative Study of 'Reasonable Adjustment' and 'Undue Burden' Provisions for People with Disabilities Accessing Public Transport Services under European Union Law.' Keele University September 2014

Pearson A.V., 'What's worth got to do with it? Language and the socio-legal advancement of disability rights and equality' (2014) 20(3) Web JCLI.

Proposal for a Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services. 2015/0278 (COD)

Rankin, J C, 'Disability, Citizenship & Identity' (PhD, York University 2009)

Reaching the most vulnerable; proposed supplement to the Standard Rules on the Equalization of Opportunities for Persons with Disabilities Annex in UNGA Monitoring the implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, fortieth session (12-22 February 2002) E/CN.5/2002/4 and CRPD Article 24.

Report of the First European Disabled People's Parliament, 3 December 1993

Review and appraisal of the World Programme of Action concerning Disabled Persons

Report of the Secretary-General, Fifty-second session, Item 104 of the provisional agenda, 16 September 1997

Select Committee on the Equality Act 2010 and Disability Oral and Written Evidence HL (24 March 2016)

Solicitors Regulation Authority, *A new route to qualification: the Solicitors Qualifying Examination A Consultation Summary* (SRA October 2016) 5

Special Educational Needs Report of the Committee of Enquiry into the Education of Handicapped Children and Young People (Warnock Report) 1978 Ch. 7.

Staffordshire and Stoke Partnership Trust, 'Box of Trix achieving results' [2016] 401 (9 December) *The Word* 3.

The Quality Assurance Agency for Higher Education, 'Code of practice for the assurance of academic quality and standards in higher education Section 3: Disabled students - February 2010' 2nd Edition, 2010

The Quality Assurance Agency for Higher Education, 'UK Quality Code for Higher Education Part A: Setting and maintaining academic standards' [2015] Subject Benchmark Statement UK Quality Code for Higher Education Part A: Setting and maintaining academic standards Law 4

Tinklin T, Riddell S, Wilson A, 'Disabled Students in Higher Education' [2004] CES Briefing No. 32

UN, 'Plan of Action for the second phase (2010-2014) of the World Programme for Human Rights Education' (2010) (A/HRC/15/28, 27 July 2010)

United Nations, 'Committee on the Rights of Persons with Disabilities
Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland*' CRPD/C/GBR/CO/1 (3 October 2017)

UN Committee on the Rights of Persons with Disabilities, General Comment No. 2 on Article 9 (Accessibility), adopted at the eleventh session of the Committee (30 March-11 April 2014) on 11 April 2014, UN Doc, CRPD/C/GC/2

UN Committee on the Rights of Persons with Disabilities, General Comment No. 4 on Article 24: Right to inclusive education (2 September 2016), UN Doc, CRPD/C/GC/4

UN ESC, 'Commission on Human Rights Sixtieth session Item 17 (c) of the provisional agenda Promotion and Protection of Human Rights: Information and Education United Nations Decade for Human Rights Education (1995-2004): Report on achievements and shortcomings of the Decade and on future United Nations activities in this area' (25 February 2004) E/CN.4/2004/93

UNGA, 'Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, The Concept of Reasonable Accommodation in Selected National Disability Legislation. (Seventh session New York, 16 January-3 February 2006) **(A/AC.265/2006/CRP.1)**

UNGA, 'Evaluation of the implementation of the second phase of the World Programme for Human Rights Education. Report of the Office of the United Nations High Commissioner for Human Rights' (16 July 2015) (A/HRC/30/24)

UNGA, 'Fifty-eighth session Item 119 (b) of the provisional agenda* Human rights questions: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms, Progress of efforts to ensure the full recognition and enjoyment of the human rights of persons with disabilities' (24 July 2003) A/58/181,

UNGA, 'Fifty-fifth session Item 116 (b) of the provisional agenda* Human rights questions: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms United Nations Decade for Human Rights Education (1995-2004)' (7 September 2000) A/55/360, II (A) (8) and 142 (e)

UNGA, 'Fifty-first session Agenda Item 110 (b) Human Rights Questions: Human Rights Questions, including alternative approaches for improving the effective enjoyment of Human Rights and Fundamental Freedoms' (12 December 1996) A/51/506/Add.1, 10(e), 85 and 87.

UNGA, 'Fifty-second session Agenda item 112 (b) Human Rights Questions: Human Rights Questions, including alternative approaches for improving the effective enjoyment of Human Rights and Fundamental Freedoms, United Nations Decade for Human Rights Education (1995-2004) and public information activities in the field of human rights Report of the Secretary-General Addendum Guidelines for national plans of action for human rights education' (20 October 1997) A/52/469/Add.1, 11(c)

UNGA, 'Human Rights Council Advisory Committee, Third session 3-7 August 2009
Item 3 of the provisional agenda Requests Addressed to the Advisory Committee
Stemming From Human Rights Council Resolutions Written statement* submitted by
Amnesty International (AI), a non-governmental organization in special consultative
status' (30 July 2009) A/HRC/AC/3/NGO/3

UNGA, 'Implementation of the World Programme of Action concerning Disabled
Persons' ([A/RES/37/53](#))

UNGA, 'Implementation of the World Programme of Action concerning Disabled
Persons and the United Nations Decade of Disabled Persons' ([A/RES/45/91](#))

UNGA 'A/RES/52/82 Implementation of the World Programme of Action
concerning Disabled Persons:

Towards a Society for All in the Twenty-first Century' (30th September 1998) 52nd
Session

UNGA 'A/RES/54/121 Implementation of the World Programme of Action
concerning Disabled Persons:

towards a society for all in the twenty-first century' 83rd plenary meeting (17 December
1999) [on the report of the Third Committee (A/54/595)]

UNGA 'A/RES/56/115 Implementation of the World Programme of Action
concerning Disabled Persons:

towards a society for all in the twenty-first century' 88th plenary meeting (19 December
2001) [on the report of the Third Committee (A/56/572)]

UNGA 'A/RES/58/132 Implementation of the World Programme of Action
concerning Disabled Persons: towards a society for all in the twenty first century' 58th

Session, 77th plenary meeting (22 December 2003) [on the report of the Third Committee (A/58/497 (Part II))]

UNGA Monitoring the implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, fortieth session (12-22 February 2002)
E/CN.5/2002/4

UNGA Monitoring the implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Fortieth session (9-18 February 2005)
E/CN.5/2005/5

UNGA Monitoring the implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, thirty eighth session (8-17 February 2000)
E/CN.5/2000/3

UNGA, 'Plan of Action for the third phase (2015–2019) of the World Programme for Human Rights Education Report of the Office of the United Nations High Commissioner for Human Rights' (4 August 2014) (A/HRC/27/28)

UNGA 'Report of the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities'(2005) (A/57/357) Section IV

UNGA, 'Twenty-fifth session Agenda items 2 and 3* Thematic study on the right of persons with disabilities to education, Report of the Office of the United Nations High Commissioner for Human Rights', Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, Promotion and protection of all human rights, civil,

political, economic, social and cultural rights, including the right to development,
Human Rights Council (18 December 2013) (A/HRC/25/29)

UNGA, 'World Programme of Action concerning Disabled Persons' (A/RES/37/52)

Unite Students and HEPI, *Reality Check: A report on university applicants' attitudes and perceptions Part of Unite Students' Insight Series 2017* (2017)

United Nations, *United Nations Decade of Disabled Persons 1983-1992 World Programme of Action concerning Disabled Persons* (1982)

Vicker, B. (2009). The high functioning person with an autism spectrum disorder: A "tourist" in his native country. Bloomington, IN: Indiana Resource Center for Autism.

Watts R, 'An independent review of Equality 2025' [2013] (Advisory Non Departmental Public Body) For the Department for Work and Pensions

Webb J, 'Taking Values Seriously: The Democratic Intellect and the Place of Values in the Law School Curriculum' (Legal Studies Research Paper No. 2009-06 University of Warwick School of Law)

Zhu E and Bergom I, *Lecture Capture: A Guide for Effective Use* (CRLT Occasional Paper No 27 2010)

Treaty on European Union - Maastricht Treaty, Single European Act, Merger Treaty - Brussels Treaty, Treaties of Rome: EEC and EURATOM treaties, Treaty establishing the European Coal and Steel Community.