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Rethinking Disability Law: Theoretical Limitations and Transformative Possibilities

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Abstract: What happens in academic Disability Law *matters* – its theoretical orientations and proposals influence policy development and approaches to rights implementation, globally. This article examines certain tendencies within Disability Law scholarship that may constrain its transformative potential, namely: an over-reliance on liberal philosophical frameworks, a culture of intellectual authority/hierarchy that elevates certain scholars as definitive voices, citation practices that ignore rich theoretical traditions and insights, and conceptual reframing that is presented as innovation but often risks 'reinventing the wheel', while simultaneously diminishing the radical potential of existing ideas. Through careful analysis, including a detailed consideration of key proposals regarding the Human Rights Model of disability, this article illustrates how these tendencies combine to influence the field's capacity to address structural conditions affecting disabled people's lives. The article concludes by proposing some ways forward for/in Disability Law, involving deeper engagement with diverse theoretical traditions to foster more transformative approaches to disability justice.

Keywords: Disability Law, Theory, Human Rights Model, Social Model, Academic Practice, Disability Justice

1. Introduction

In this think-piece, I examine and raise concerns regarding certain tendencies within academic Disability Law. Specifically, I analyse the following practices: over-reliance on liberal philosophical frameworks, insufficient engagement with radical critiques, citation practices that reduce rich theoretical traditions to single attributions, and a pursuit of conceptual novelty that

repackages existing ideas and in so doing risks diminishing their original theoretical richness or radical potential. I argue that these tendencies collectively constrain the field's impact.

Before advancing my 'critical friend' analysis, I must emphasise that my critique does not apply to all disability legal scholars. There are those who have engaged with various critical theories and questions of power (eg Dhanda and Parashar 2009 collection; Waterstone, 2007; Malhotra and Rowe, 2014; Kanter, 2015; Steele, 2020). Disability Law today includes exciting researchers deploying sophisticated theoretical frameworks – for example, Liat Ben-Moshe (2020) and Lucy Series (2022) in their work on deinstitutionalization, incarceration, and abolitionist politics. Their work demonstrates how rich insights emerge when legal scholars engage deeply with social and political thought. Yet too much disability legal scholarship remains either overly doctrinal, trapped within liberal frameworks, or preoccupied with conceptual novelty at the expense of substantive innovation.

I write not as a rebuke, but as a plea for intellectual energies to be more purposefully applied. I advocate for the field to engage more often and in greater depth with diverse theoretical traditions. My critique, set forth in Section 2, develops through four interconnected arguments:

(1) First, I examine Disability Law's selective theoretical engagement, particularly its overreliance on liberal philosophical frameworks, despite their well-recognised limitations;
(2) Second, I analyse how intellectual elitism and conceptual authority shape both legal scholarship broadly and Disability Law specifically;
(3) Third, I explore problematic citation practices where rich theoretical traditions are reduced to single attributions (the 'star author' effect), resulting in significant loss of theoretical depth and historical context;
(4) Finally, through a detailed case study, I consider how disability legal scholarship embraces supposedly 'original' concepts or approaches from 'star authors', failing to recognize that these ideas are neither original nor uncontested, and most importantly, stripping away the radical potential present in earlier articulations.

This critical examination offers an original intervention in debates about Disability Law's intellectual foundations and practices.

What motivates me to make this intervention is that academic Disability Law is influential – its sphere of influence extends beyond academia into international disability governance. What happens in Disability Law, *matters*. Analysis has highlighted the predominance of lawyers and those with legal disciplinary backgrounds across UN bodies, even on committees that do not require members to have those backgrounds (Truscan, 2018; Callejon, 2021). During the period 2012-18, the CRPD Committee saw a narrowing of expertise, with members having technical knowledge in accessibility, assistive technologies, and social care dropping from 22% to just 6% by the second election cycle, with the downward trend continuing in subsequent years (Truscan, 2018; Callejon, 2021). The CRPD committee has been and continues to be composed primarily of academic Disability Law scholars, legal professionals and others with legal training/backgrounds, who are likely to be influenced by academic disability legal scholarship. In a very direct way, therefore, academic Disability Law shapes how disability rights are conceptualized and implemented globally.

Given this context, examining interdisciplinary engagement within Disability Law scholarship becomes crucial. Since direct representation from fields beyond law is limited in these influential spaces, I suggest that legal scholars bear responsibility for meaningfully incorporating diverse knowledge perspectives. Further, a lawyer equipped with such knowledge is better positioned to advance disability justice, especially when working within institutional spaces where other disciplinary voices are largely absent.

In Section 3, I provide a detailed case study of the Human Rights Model of disability, a framework developed by and promoted within Disability Law, to demonstrate how these problematic tendencies converge in particularly consequential ways. Through careful analysis of this influential framework, I illustrate how selective theoretical engagement, elevation of certain scholars, and the repackaging of established concepts, can constrain transformative potential in disability rights governance, globally.

Section 4 then moves beyond critique to propose constructive pathways forward. I outline several interrelated approaches through which Disability Law might break free from theoretical constraints, including engagement with perspectives beyond liberalism, more rigorous interdisciplinary approaches, and greater attentiveness to knowledge generated through disabled people's activism. I highlight the work of scholars already exemplifying these approaches,

demonstrating the rich possibilities that emerge when legal scholarship deeply engages with diverse theoretical traditions.

2. The Limits of Disability Law's Theoretical Engagement: A Critical Framework

In the following analysis, I employ a series of critical interventions to examine the tendencies within Disability Law scholarship mentioned earlier. It is, of course, important to recognise that Disability Law does not exist in isolation but is situated within broader legal scholarship and inherits many of its tendencies. The patterns I identify reflect both general characteristics of legal academia and their specific manifestations within Disability Law. For instance, while citation practices that reduce rich theoretical traditions to single attributions can be found across legal scholarship – as seen in the treatment of intersectionality theory (see 2.3 below) – these practices take on particular significance in Disability Law.

Rather than offering a comprehensive review, I deliberately focus on patterns that constrain the field's transformative potential. Each intervention addresses a distinct aspect of the field's theoretical engagement. These interventions are not uniform in scope – some require more detailed examination than others – but together they reveal systemic limitations in how Disability Law engages with theory. By analysing these patterns, I aim to open space for more transformative approaches that could better advance disability justice.

2.1 First Concern: Selective Engagement with Theory

Traditionally, Disability Law's engagement with theory has been rooted in liberal philosophical traditions and has seldom looked beyond them (Silvers and Stein, 2006; Stein, 2007; Bérubé, 2009). The capabilities approach, especially that of Nussbaum (2000, 2003, 2006, 2011), appears to have been particularly influential in the field. The appeal of her work is understandable – she undoubtedly strives to address certain shortcomings in (neo)liberal thought – yet it remains tethered to liberalism's foundational assumptions of individual freedom, autonomy, and rights. While extending liberal theory in important ways, Nussbaum and her followers tend to stop short of embracing more radical reconceptualisations of personhood and social organization arising from alternative philosophical traditions such as republicanism, communitarianism, or radical democratic thought – traditions that challenge individualism in more fundamental ways, and might better serve disability justice.

As an external observer of the field, I have noticed a curious paradox: disability legal scholars recognise the profound limitations of liberal frameworks, yet appear reluctant to break free from liberalism's conceptual universe. For example, in an early article, Silvers and Stein (2007) examined how traditional social contract theory, with its emphasis on reciprocity, struggles to include disabled people. They were interested in Nussbaum's capabilities approach because it sought to improve upon liberal theories of justice. Their goal was to determine if it addressed the specific justice issues that disabled people face more effectively than previous liberal frameworks. Their careful evaluation of her work acknowledges both its significant contributions and its limitations. They critique how Nussbaum's concept of 'dignity' may inadvertently reinforce problematic social hierarchies and identify areas where her theory requires further development – such as ensuring equality of opportunity beyond basic thresholds and resolving resource allocation conflicts. Their critique operates, however, firmly within liberal parameters. They, like many other authors in Disability Law to the present day, do not seem to be driven to abandon the framework completely.

Another striking example of this paradox is Amita Dhanda's (2008: n.p.) celebration of the CRPD's promotion of 'autonomy with support' alongside Degener's (2024) more recent endorsement of the same idea, albeit under the term 'inclusive autonomy'. Both view this as a crucial recognition of interdependence and the role of relationships in ensuring that disabled people determine the course of their lives, and they clearly see this as a move beyond liberal individualism.

Yet by codifying interdependence in the language of 'supported decision-making', the CRPD risks limiting the scope of what could be a more radical challenge to liberalism, ultimately narrowing its transformative potential. While supported decision-making acknowledges that autonomy is not exercised in isolation, it remains structurally tethered to the liberal paradigm – one that still assumes a rights-bearing individual as its foundational subject. Rather than unsettling liberal individualism, it 'rehabilitates' it by accommodating interdependence within a framework that remains fundamentally liberal in its logic. Many scholars seem to assume that merely redefining autonomy in more relational terms is enough to transcend liberalism. This underestimates the extent to which liberalism operates as a structural barrier to disability justice – not only through its individualist conception of the self, but also via its legal, political, and economic foundations. The emphasis on autonomy, even when reframed relationally, continues

to centre the individual as the primary site of rights and agency. But is this truly the best foundation for disability justice? To answer this, perhaps it is time we looked outside the Minority World for potential new avenues. Ubuntu philosophy, for example, would suggest otherwise, offering a vision of justice rooted in relationality, mutual responsibility, and interdependence rather than autonomy, *however* reimagined. This is but one example of many alternative philosophies that offer profound reconceptualizations of justice and personhood.

A genuinely radical departure from liberalism would require more than a relational turn in how we conceive autonomy. It would demand a fundamental reimagining of social organization, the relationships between the individual, community, and state, and the economic structures that sustain liberal societies. It may also require asking a more difficult question: is autonomy, however reconfigured, really indispensable to achieving disability justice? Or does its continued dominance – no matter how relationally reimagined – reflect the constraints of a political and legal order that remains fundamentally committed to liberalism?

The consequences of liberalism's intellectual grip over Disability Law are not merely academic. Without engaging more deeply with transformative traditions, Disability Law risks producing frameworks that appear progressive but ultimately fail to challenge the structural conditions sustaining disability oppression. Republicanism's focus on freedom as non-domination, communitarianism's emphasis on social embeddedness, post-liberalism's attention to solidarity and community building, and post-colonial critiques of Western liberal assumptions all offer potential avenues for reimagining disability justice beyond liberal constraints.

Legal scholars might question the practical application of these alternative theoretical traditions. I imagine that they might counter my argument here by saying that translating such frameworks into legal mechanisms is unrealistic, given that the dominant world order is, currently, liberal. My response would be that we cannot afford to be constrained by existing legal frameworks. Our current legal frameworks do not represent the only possible articulations of law. The most significant legal advances have often emerged when scholars and activists dared to imagine beyond current paradigms and legal architectures. We do need to dare to think beyond.

It concerns me greatly that the prevailing discourse in Disability Law often treats the UN CRPD as the pinnacle of disability rights achievement. Without question, it has been an incredible force for good. The UN CRPD has provided a legal and political framework that holds governments accountable, offering a mechanism to shame them into action when rights are

violated. It has embedded disability rights within broader human rights law, ensuring a universal foundation for legal and policy reform while promoting intersectionality and supported decision-making. Beyond law, it has helped shift institutional and cultural attitudes, reinforcing the principle that disabled people are active rights-holders not passive recipients of care. But eulogizing it risks discouraging the critical theoretical engagement necessary for further progress. The CRPD, for all its advances, remains deeply embedded in liberal frameworks – and as most leading authors in Disability Law appear to agree, these frameworks are less than ideal. But what would happen if we thought about disability rights through other traditions – republicanism, radical democracy, post-liberal thought, Indigenous philosophies?

What if, instead of seeing justice as something secured through the state, we considered how it might be built through solidarity, interdependence, and shared responsibility? Might different legal architectures emerge – ones that rethink power, community, and care? Would this require a new conception of rights – not as individual entitlements/possessions, but as relational commitments? Could such a system scale beyond local communities? If justice were no longer secured through the state, what structures might take its place? I suggest that these are questions worth asking; even if answering them is difficult.

Unfortunately, academic Disability Law is not yet asking these questions – or at least, not asking them loudly or persistently enough.

2.2. Second Concern: Intellectual Elitism and Conceptual Authority

In the previous section, I examined how Disability Law remains constrained by liberal frameworks despite recognizing their limitations. This theoretical narrowness is further reinforced by a tendency within disability legal scholarship to elevate certain scholars to ‘star’ status – academics whose work becomes highly influential and widely cited, often without sufficient acknowledgment of their theoretical lineage or critical engagement with competing perspectives. This practice compounds the field’s isolation from transformative traditions by creating intellectual bottlenecks where ideas from outside the field are filtered through a select few authorities. In this respect, Disability Law mirrors what Bourdieu (1987) famously identified in his analysis of the juridical field, namely the creation of an intellectual elite whose authority is reinforced through institutional deference, legitimizing particular concepts and approaches.

There are always risks associated with failing to trace ideas back to their theoretical origins. Consider how Disability Law has engaged with the social model of disability, often rehearsing the critiques of the model made by Tom Shakespeare in much of his writing from the 2000s onwards. We see this in the work of Degener (2016, 2017a,b), who makes clear her indebtedness to Shakespeare's perspectives. The problem, as I perceive it, is that she appears to have adopted his critique of the social model without questioning its validity, returning to the original writings of UPIAS (1976) or examining archival materials that would reveal the nuance and context of the model's original articulation. The social-relational model of disability, which was later termed the 'social model' by Oliver (1990), is thus critiqued at the third remove, without rigorous engagement with its foundational texts and intended purposes. Degener's institutional authority as a leading academic in Disability Law and former Chair of the UN CRPD Committee has meant that her position on the social model has often been adopted without significant scrutiny by other scholars in the field – a form of intellectual deference that I fear further distances the discourse from foundational texts. Other scholars then adopt Degener's position, creating a chain of citation that becomes increasingly detached from the original and vital work that UPIAS undertook to transform disability from a 'personal trouble' to a 'public issue' (see Beckett and Campbell, 2015; Lawson and Beckett, 2021), whilst in no way denying the reality and impact of impairment-effects.

This pattern of citation and authority creates what we might call an echo chamber effect, where particular ideas circulate and gain legitimacy not through rigorous testing against competing perspectives or interpretations, but through repetition within a closed discursive community. This intellectual insularity becomes particularly problematic given the institutional influence that legal expertise wields in disability rights governance, where theoretical limitations can translate directly into policy frameworks.

2.3. Third Concern: Citation Practices and the Loss of Theoretical Richness

Having examined the 'star author' effect, I now turn to my next concern: a tendency in academic law more broadly, but replicated in Disability Law, to become preoccupied with conceptual 'breakthroughs'. Academic innovation can be very important. But there are dangers in pursuing or valuing novelty at the expense of intellectual rigour and historical awareness.

An example of the type of practice that I suggest is problematic, is when legal scholars attribute ideas to other legal scholars who have merely 'translated' complex existing concepts into

more technocratic language suitable for law. The originators of these concepts – often from different disciplines or activist traditions – somehow become forgotten or obscured, whilst the legal translator becomes celebrated as having made an important breakthrough. This can happen even when the legal scholar doing that translational work explicitly acknowledges that they are drawing on existing traditions. This is not merely an issue of poor citation practices and loss of attribution. The problem, as I see it, is that in this process the original political and intellectual context is all-too-often stripped away, and with it, the more radical or transformative dimensions of the original thinking. It creates an illusion of theoretical progress being made, when in fact much of the analytical richness of the source material has been lost.

Consider how legal scholarship in general – including Disability Law – treats intersectionality. Kimberlé Crenshaw's 1989 work powerfully systematized this concept for legal analysis. She explicitly positioned her argument within Black Feminist intellectual traditions, acknowledging how her analysis built on generations of Black Feminist thought. Her work referenced Sojourner Truth's 'Ain't I a Woman?' speech, engaged with contemporary Black feminist scholars, and took the famous pamphlet 'All the Women Are White, All the Blacks Are Men, But Some of Us Are Brave' as its point of departure (Crenshaw, 1989). She made no claim to have invented intersectional thinking – rather, she gave legal form to long-standing insights from Black Feminist thought.

Yet as I read within legal academic writing, I find that intersectionality is frequently stated to be Crenshaw's invention, or associated only with her work. Scholars often cite her work without returning to the rich tradition she drew upon and without recognising sufficiently, if at all, how, this tradition long-ago understood how systems of oppression interact. It is in those original, primary sources, that we find crucial insights about how intersectional oppression operates at structural levels beyond individual discrimination. It is by engaging with those sources that we gain an understanding of how intersectional analysis emerged from collective resistance and activism and how intersectional thinking was grounded in lived experience and collective knowledge production.

This pattern, whereby legal scholars cite contemporary legal authorities without engaging with the original sources they drew upon, creates another echo chamber. The result is a field at risk of appearing to advance conceptually whilst actually recycling existing ideas under different labels, often missing the richness and nuance given to a concept or framework by its originators.

2.4. Fourth Concern: False Novelty and the Dilution of Radical Ideas

Having examined how citation practices can sometimes strip away the intellectual heritage that scholars themselves acknowledge, I now analyse a final problematic practice and its implications: the practice of claiming novelty, where there is little or none. To provide a concrete example of this, I examine Disability Law's embrace of Martha Fineman's (2008 and in many subsequent articles) articulation of vulnerability theory. Although Fineman herself is not primarily situated within Disability Law, her ideas about vulnerability have become a (perhaps 'the') dominant reference point for legal scholars working with the concept. Unlike Crenshaw, who carefully situated her work within Black Feminist thought, Fineman (2008: 9) has claimed that vulnerability was 'grossly under-theorized' before her intervention, and this is how and why she was able to do innovative work with the concept. This assertion disregards a well-established intellectual genealogy of theorising 'vulnerability', spanning multiple disciplines. When subsequent scholars then cite Fineman as the originator or primary theorist of vulnerability, it compounds this disconnection.

This observation is not about quibbling over the ownership of ideas or attribution, though such matters do have importance in academic contexts. Rather, my concern is, similar to the pattern identified in the previous section, that through these practices theoretical richness is lost. Alternative ways of conceptualizing vulnerability – frameworks that might offer more radical or transformative potential – are overlooked.

Space does not permit me to write an overview of the long history of thinking about vulnerability and its implications, ethically, politically, and in relation to human rights and welfare policy, but to give a few examples: *before* Fineman, Hannah Arendt (1958) had explored human frailty and natality as conditions that necessitate political community. Emmanuel Levinas (1969, 1998) had positioned vulnerability and the face-to-face encounter with the Other as the foundation of ethics. Judith Butler's (2006) work on precarity had theorised vulnerability as both universal and, importantly, differentially distributed through power relations. Development scholars like Chambers (1989) had mapped vulnerability's external and internal dimensions, while sociologists Giddens (1991), Beck (1992) and Bauman (2000) examined it in relation to risk and modernity. Most significantly, Bryan Turner's book *Vulnerability and Human Rights* (2006) had developed a sophisticated framework centring embodied vulnerability in social and political theory – arguing

that human rights needed to be grounded in our shared vulnerable embodiment, dependency, social reciprocity, and understanding of institutional precariousness.

In some of my earliest work I sought to build upon Turner's insights, but critically, drawing upon empirical work with members of the disabled people's movement in the UK and grounded in their perspectives (Beckett, 2006). I proposed a politically engaged model of 'vulnerable personhood'. This framework recognized that our personhood – not just our bodies – is vulnerable to social, economic, and political factors. I sought to connect vulnerability directly to social processes and citizenship as engaged practice, avoiding the othering of particular groups to whom the 'label' of 'vulnerable' often become attached, whilst recognizing that we all face vulnerability through various forms of social exclusion. By positioning human rights as the minimal moral horizon for political engagement, I sought to eliminate artificial distinctions between types of rights claims.

Drawing explicitly on Mouffe's (1993 and later) agonistic politics – a radical democratic framework standing resolutely outside liberal frameworks – my approach positioned vulnerability not as a condition requiring consensus-based protections, but as grounds for political struggle over whose personhood is recognized and how it is secured. This creates space for a politics that fundamentally challenges liberal conceptions of both vulnerability and personhood, making it particularly valuable for disability justice which requires confronting, not merely accommodating, dominant paradigms.

I make absolutely no claim that I, or any of the other authors I have mentioned here, have resolved all of the ambiguities around the concept of vulnerability and its political implications, nor realised its full potential. The work continues. What I am instead arguing is that there was theorising, *much theorising* on vulnerability, predating Fineman's contribution and this body of work offers alternatives that might be enlightening or prompt fresh thought amongst academics in legal studies more broadly and Disability Law in particular.

I want to emphasize that I am not seeking to deny or diminish Fineman's contributions. Her voice has been valuable, but as one voice amongst many. I chose her work as an example to illustrate how the practice of not engaging with work beyond the confines of Law (or particular branches of philosophy), can be limiting.

Further, these practices have real consequences beyond academia. In this case, Disability Law's engagement with vulnerability theory primarily through Fineman's framework, means that

it is not yet capitalizing on the concept's potential for transcending liberal assumptions. This represents a missed opportunity to develop more transformative approaches to disability justice – approaches that could move beyond merely modifying liberal frameworks to fundamentally reimagining disability rights through more radical theoretical traditions.

What began as an examination of vulnerability theory in relation to one concern, has ultimately illustrated all the problematic patterns discussed in Section 2 of this article: selective theoretical engagement, elevation of 'star authors', citation practices that reduce rich traditions to single attributions, and narrowing of concepts in ways that diminish radical potential. In the following section I want to explore one final example of how these practices can coalesce – and this example is particularly important for Disability Law.

3. The Human Rights Model of disability as Exemplar: Convergence of Problematic 'Tendencies'

The tendencies I have outlined in Section 2 converge particularly clearly in the development and promotion of the Human Rights Model of disability within and by scholars in Disability Law. This case merits detailed examination not only because it exemplifies these problematic patterns/practices, but also because it has implications for disability rights governance globally.

The Human Rights Model of disability was co-developed by Theresia Degener and Gerard Quinn – most explicitly articulated in their influential 2002 report which laid important groundwork for the UN CRPD. While both scholars have made crucial contributions, with Quinn particularly focused on legal frameworks and applications, Degener has subsequently become more prominently associated with the model through her consistent promotion of it across multiple publications and during her tenure as Chair of the UN CRPD Committee. The latter position afforded her significant institutional authority to shape disability rights discourse. She has explicitly positioned the Human Rights Model as an improvement upon the social model of disability. Whilst she is not alone in making that claim, she has been the most high profile promoter of the 'improvement thesis', going so far as to suggest that the Human Rights Model moves beyond its predecessor (Degener, 2016).

In work that I co-authored with Anna Lawson on the relationship between social and Human Rights Models of disability (Lawson and Beckett 2021), we carefully assessed Degener's arguments. We respectfully disagreed with her conclusions and highlighted the complementarity

between the models. The social model, we contended, has been and remains a vital descriptive and heuristic tool, exposing how societal structures disable people with impairments. Crucially, it has played and continues to play a political role, creating a 'commons' or a 'we' – a collective identity that unites disabled people in resistance to structural oppression. The Human Rights Model, by contrast, does not construct a collective subject but rather an individual one: the rights-bearing disabled person. It does not merely describe injustice but sets out the obligations necessary to remedy it. We argued that the two work in symbiosis: the social model galvanises resistance and identifies disabling structures and processes, while the Human Rights Model – embodied in the CRPD – translates this critique into legal and policy obligations and, for State parties that have signed and ratified the convention, commitments.

Each model, we argued, does distinct and important work, they serve different but complementary functions, and positioning one as superseding the other misunderstands their distinct purposes and potential.

I was not surprised when Degener (2024) responded to our critique. I was, however, surprised by her counter-argument. Whilst agreeing certain of our points, she then reasserted the primacy of the Human Rights Model by claiming that unlike the social model, it is 'normative' – a point she implies that we overlooked. In fact, we had not overlooked the normative quality of the Human Rights Model. We observed the following:

> The nature of the human rights model is prescriptive, rather than descriptive, in that it answers the question 'what should we do?' to advance social justice for disabled people. Its answer is that we need to progress disability policy and law reform in line with human rights principles and obligations, as set out in the CRPD. (Lawson and Beckett, 2021: 365)

Further, we commented that:

> as a technology of sign systems, the human rights model delineates the type of statement and practice associated with a human rights approach to disability policy. It sets out standards of behaviour expected of States and institutions to ensure basic social justice for disabled people and it creates and provides guidance on practices and procedures for monitoring progress in rights-implementation. (Lawson and Beckett, 2021: 368)

These passages clearly encapsulate our view that the Human Rights Model functions normatively by providing a roadmap for action, setting standards for States and institutions, and creating frameworks for monitoring progress in rights implementation. Importantly, however, in an argument that for the sake of space I will not repeat here, we also pointed to the social model's political and normative foundations (Lawson and Beckett, 2021).

In her response Degener (2024) also sought to elaborate the Human Rights Model through two more concepts: 'inclusive equality' and 'inclusive autonomy'. While she had previously discussed inclusive equality in a lecture (2018) and an article co-authored with Gómez-Carillo de Castro (2022), she appears to have introduced the term 'inclusive autonomy' for the first time in her 2024 article.

The problem here is that Degener (2024) appears to be presenting these concepts as innovations, if not her own, then of Disability Law. I contend that, in fact, both concepts had been thoroughly examined in political and social theory, long before they began to circulate in disability legal scholarship and practice. Degener (2018) characterizes 'inclusive equality' as having four dimensions: redistributive, recognition-based, participative, and accommodating (accommodations-based). Yet political theorists have long explored these exact dimensions – prime examples being Nancy Fraser's (1995) influential analysis of redistribution and recognition and Iris Marion Young's (1990) work on the politics of difference. Young's 'five faces of oppression' offers a rich analytical tool for understanding why simply granting formal participation rights is insufficient if underlying power structures remain intact. She famously observed that justice:

> should refer not only to distribution, but also to the institutional conditions necessary for the development and exercise of individual capacities and collective communication and cooperation (Young, 1990: 39)

Further, in an interesting and I am certain not accidental choice of phraseology, she observed that injustice then refers to 'two forms of disabling constraints, oppression and domination" (Young 1990, 39). Arguably, these bodies of work – and their successors – provide a deeper and more nuanced understanding of equality and participation than appears in Degener's framework.

Similarly, 'inclusive autonomy' appears to be a relabelling of a long-standing concept in feminist philosophy – that of relational autonomy. This strikes me as a case of putting new labels on old bottles. I also wonder whether, whatever term is used (relational autonomy/inclusive autonomy), it is as 'radical' a concept as it once was. Posthumanist approaches have begun to push beyond relational autonomy in interesting ways. For example, from within Disability Law, Beverley Clough (2021) has compellingly argued that autonomy must be understood not only in relational terms but as fundamentally entangled with materiality, embodiment, and the non-human world. This perspective is particularly relevant in disability contexts, where autonomy is often mediated through technological supports, care infrastructures, and non-verbal forms of communication. I worry about the promotion of a thin conception of 'inclusive autonomy' that acknowledges interdependence without fully exploring its full implications; or as discussed earlier, remains trapped within liberal frameworks.

The case of the Human Rights Model of disability, its development by and association with one influential author, illustrates how the patterns identified in Section 2 converge in particularly consequential ways. First, Degener's presentation of the human rights model as an innovative advancement beyond the social model suggests to me that she has relied too heavily on secondary interpretations of foundational work (eg that of UPIAS). I cannot see in her analyses an acknowledgement of the sophisticated sociological analysis and intellectual maneuvers of the originators of the social-relational approach to disability (Beckett and Campbell, 2015). In effect, she has been critiquing an interpretation of a rearticulation – engaging with critiques of Oliver's (1990) 'version' of UPIAS's original ideas, rather than returning to the foundational sources. This has created a chain of citation that becomes increasingly detached from the social model's original nuance and context.

Second, by introducing terms like 'inclusive equality' and 'inclusive autonomy' to elaborate the human rights model – perhaps to bolster her argument that it is an improvement on the social model – Degener follows the pattern of repackaging established concepts without engaging sufficiently with their intellectual lineage in eg feminist philosophy, political theory, and Critical Disability Studies.

Third, Degener's institutional authority as former Chair of the UN CRPD Committee amplifies this dynamic, creating conditions where her arguments and interpretations are likely to be adopted and repeated by others with limited critical scrutiny. Whilst we cannot know with

certainty how her 2024 contribution will be received, historical patterns in the field suggest that her conceptual elaborations of the Human Rights Model may well be accepted and cited with minimal critical engagement.

This example is particularly significant because the Human Rights Model has become influential in shaping disability rights implementation globally. The predominance of legal scholars in bodies overseeing the CRPD means that any theoretical limitations in disability legal scholarship risk directly impacting upon disabled people's lived experiences. When influential scholars build theoretical frameworks on selective readings of established models and present repackaged concepts as innovations, it constrains the field's transformative potential and ultimately limits possibilities for achieving disability justice.

4. Toward Meaningful Theoretical Engagement in Disability Law

Having examined how the case of the Human Rights Model of disability exemplifies the problematic tendencies I have identified throughout this article, I now turn to the question of how Disability Law might move beyond these limitations. How might this important field move toward more transformative engagement with theory? I propose several interrelated approaches:

First, the field needs to break free from the constraints of liberal philosophical frameworks. Liberalism's individualistic focus on autonomy and rights comes at the expense of understanding structural oppression and collective emancipation. Moving beyond liberalism means engaging with theoretical traditions that fundamentally challenge these core assumptions – traditions that centre interdependence rather than autonomy (however reimagined), structural transformation not only individual rights, and collective struggle as much as (sometimes more than) procedural justice.

Second, Disability Law might develop a more rigorous approach to interdisciplinary engagement. Rather than selectively borrowing concepts from other fields, legal scholars might engage deeply with the broader intellectual traditions from which these concepts emerge. This means not only enhancing citation practices (albeit that matters), but grappling, meaningfully, with the complexity and nuance of ideas, before thinking through how these ideas might apply to existing or the creation of new legal frameworks. It means engaging with an array of critical theories, not as an afterthought, but as foundational perspectives.

Third, the field should resist the temptation to position legal mechanisms as the primary vehicle for securing disability rights. Legal frameworks are necessary but insufficient tools for transformative change. They must be situated within broader struggles for social justice, recognising that law can both enable and constrain emancipatory politics. This requires greater humility about law's transformative potential and more explicit recognition of how legal discourses can sometimes reinforce, rather than challenge, existing power relations.

Fourth, it is important for Disability Law to engage more seriously with knowledge that originated outside the academy, particularly from disabled activists and disabled people's organizations. The field too often privileges academic expertise over the strategic insights and analyses of those directly affected by laws and policies. Recognizing the value of this knowledge is not simply about inclusion; it is about acknowledging that meaningful theoretical innovation – transformative ideas – often emerges from collective struggle rather than individual academic insight.

There are already scholars within the field whose work exemplifies the kind of deep theoretical engagement that I am advocating. I have already mentioned the work of Beverley Clough, Liat Ben-Moshe and Lucy Series. To these names I would add Eilionóir Flynn and Anna Arstein-Kerslake's, whose deployment of republican theories of domination has offered a sophisticated analysis of legal agency for people with learning disabilities; and Linda Steele's (2021) engagement with decolonial and Indigenous perspectives which is though-provoking. Steele's work has revealed that the indefinite detention of disabled Indigenous Australians operates as a form of settler-colonial violence masked as 'neutral' legal and therapeutic intervention; her analyses trouble conventional legal and liberal understandings of (in)justice and expose the carceral nature of disability itself.

These scholars are not preoccupied with inventing new models or new terminology; they are concerned with fundamentally rethinking core concepts and questioning dominant frameworks by engaging deeply with, and carefully applying, an array of theoretical approaches. Their work, alongside contributions from the other fields that I have mentioned in this article, provides a rich foundation upon which Disability Law could build.

5. Conclusion

In this article, I have examined what I have termed 'tendencies of concern' regarding academic Disability Law's engagement with theory: over-reliance on liberal frameworks, intellectual elitism, citation practices that flatten rich theoretical traditions, and conceptual repackaging that risks diminishing the radical potential of ideas. Whilst these are not universal practices amongst all disability legal scholars, as general tendencies within the field, they constrain its ability to challenge the structural conditions that sustain disability oppression.

Whilst my analysis may appear unsparing in places, I offer it not as a sweeping condemnation but, as I mentioned at the start of this article, as a critical friend, deeply invested in the field's potential. My plea is not merely for more interdisciplinary engagement by scholars in Disability Law, but for a fundamental rethinking of how legal scholarship approaches disability justice. This requires intellectual rigour through deep engagement with diverse theoretical traditions beyond liberalism. I feel sure that the most significant legal advances emerge not from incremental refinements within existing paradigms, but from daring to imagine beyond them. It means recognizing law's limitations, engaging seriously with knowledge produced by disabled activists and their collectives, and moving beyond the pursuit of novelty for its own sake.

By moving beyond the pursuit of conceptual novelty and engaging substantively with diverse theoretical traditions, there is the potential to create space for more transformative approaches that address not only legal doctrine but also the material conditions that shape disabled people's lives.

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