

Book Review

Irish Journal of Psychological Medicine, 40 (2023).
doi:10.1017/ipm.2021.51

Compulsory mental health interventions and the CRPD: minding equality by Anna Nilsson (pp. 200) ISBN 9781509931576.
Hart Publishing: Oxford, 2021

The United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD) was drafted in December 2006 and came into effect in May 2008. The CRPD states that “the purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity” (Article 1). The CRPD is a vitally important document in the ongoing struggle for the rights of people with disabilities.

For the purposes of the Convention, “persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.” This appears to include many people with “long-term” mental illness.

The Convention outlines an extensive series of rights, including a requirement that “States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life” (Article 12(2)). States Parties must “ensure that persons with disabilities, on an equal basis with others: (a) enjoy the right to liberty and security of person” and “(b) are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty” (Article 14(1)).

Ireland signed the CRPD in March 2007 and ratified it in March 2018, albeit with declarations and reservations, including a declaration and reservation relating to substitute decision-making and a declaration relating to involuntary mental health care.

Today, 15 years since the CRPD was drafted, it is apparent that its global impact falls short of what was envisioned at the outset. In many ways, this is the case with virtually all UN declarations, but this disappointment is, arguably, more apparent with the CRPD than with previous declarations. From a clinical perspective, two of the key contributors to this situation are extreme interpretations of Convention (which alienate many potential mediators of change) and an academic literature that is sometimes curiously disconnected from the world outside academia and from the clinical world in particular.

This is a pity. The CRPD offers a once-in-a-generation opportunity for positive, lasting change in a field that is crying out for reform. It would be a tragedy if extreme interpretations of the Convention or impenetrable theorizing obstructed achievable change or diminished the perceived relevance of the CRPD. People with disabilities have waited too long for this opportunity. The Convention simply must be made to work.

Against this complex and somewhat dispiriting background, Anna Nilsson has written an interesting, thought-provoking book titled *Compulsory Mental Health Interventions and the CRPD: Minding Equality*. Nilsson is a Postdoctoral Fellow at the Faculty of Law in Lund University in Sweden.

Nilsson’s elegant book examines the scope of permissible compulsory mental health interventions under the CRPD and notes, in particular, the conflict between two competing positions. One position is that compulsory mental health care necessarily violates the prohibition of discrimination. The other position, which is supported by the vast majority of states, including Ireland, is that compulsion can be necessary to protect health and life. According to this view, compulsion can be lawful if it is coupled with appropriate legal safeguards. Like most clinical practitioners, I tend towards the latter view, with a strong emphasis on proportionality, accountability, and oversight.

In her book, Nilsson draws on the work of Robert Alexy (a jurist and legal philosopher) to develop a framework for proportionality assessments within the context of non-discrimination. It is helpful that Nilsson starts her book with a case history, outlining some of the dilemmas seen in clinical practice, involving psychiatric symptoms, clear risk, and the need for a decision. Nilsson then outlines the CRPD’s approach to mental health care and goes on to explore various issues in national mental health legislation, usefully noting states’ obligation to protect the health and lives of people with disabilities. This dimension of the debate is often neglected in papers and books on this topic.

Nilsson then moves on to outline “proportionality reasoning” and even presents a series of relevant equations, before discussing “proportionality and non-discrimination.” Most encouragingly, Nilsson starts her “Conclusion” chapter by returning to the complex scenario that she outlined at the start and notes that the decision needs to be taken on the basis of uncertain information – as is the case in most clinical settings.

Nilsson’s argument about “proportionality” is interesting, useful, and – best of all – eschews many of the blunt, binary positions often expressed on this topic. Nilsson concludes that the CRPD does permit some forms of involuntary care for the purposes of protecting the health and life of the person. In addition, she provides valuable considerations of such concepts as

“disability-neutral legislation” and sketches out both theoretical and practical considerations relating to the CRPD and compulsory mental health interventions.

This is an interesting, thought-provoking book that emphasizes not only proportionality and non-discrimination but also the need for mental health care – a key consideration that is often omitted from discussions of the CRPD.

Conflicts of interest

Brendan D. Kelly has no conflicts of interest to disclose.

Ethical standard

The author asserts that all procedures contributing to this work comply with the ethical standards of the

relevant national and institutional committee on human experimentation with the Helsinki Declaration of 1975, as revised in 2008. The author asserts that ethical approval for publication of this book review was not required by their local Ethics Committee.

Financial support

This research received no specific grant from any funding agency, commercial or not-for-profit sectors.

BRENDAN D. KELLY

*Department of Psychiatry, Trinity College Dublin, Trinity
Centre for Health Sciences, Tallaght University Hospital,
Tallaght, Dublin 24, D24 NR0A, Ireland
(Email: brendan.kelly@tcd.ie)*