International Journal of Law in Context, page 1 of 20 (2017) © Cambridge University Press 2017
doi:10.1017/S1744552317000532

The right to inclusive education: why is there so much opposition to its implementation?

[redacted]

Abstract

Although the Convention on the Rights of Persons with Disabilities (CRPD) proclaims the right to inclusive education, and much attention is being given to the goal of inclusive education in debates on human rights, there are doubts as to whether this right has led to a new direction in policy-making. The under-researched question is: why is there so much opposition to the implementation of the right to inclusive education? This paper examines the question by distinguishing between both the concept and practice of inclusive education. Using a specific interdisciplinary approach in order to critically analyse a legal norm, the paper looks into the very meaning of inclusive education by utilising some central conclusions from disability studies to appraise the ideal of inclusive education, and seeks to resolve related challenges by drawing upon political philosophy to investigate pragmatic solutions to the obstacles to inclusive education. This paper claims that it is thereby possible to incorporate the element of actual achievability into such an ideal.

I. Introduction

Inclusive education has been the subject of much debate in recent years. This has led to a gradual recognition of the imperative to educate disabled children alongside non-disabled children. Although the concept of inclusive education is still in need of further clarification, and even the question of whether it actually adds value is some matter of controversy, the international community has been urging states to increase the inclusion of disabled children in mainstream settings. What is more, inclusive education has found a legal basis under international law in 2006 through the adoption of the Convention on the Rights of Persons with Disabilities (CRPD). This has resulted in a further boost to the promotion of inclusive education around the world.

Nonetheless, it remains to be seen whether these developments have had any favourable influence. Although the CRPD has been ratified in many countries and welcomed by international organisations, changes are not happening on the ground and discussions often appear to lead nowhere (Moore and Slee, 2012). While states parties to the Convention have sometimes adopted national legislation that mandates the participation of disabled children in the general education system, measures that would enforce it do not appear to exist. Despite the CRPD's high level of ratification, evidence indicates that disabled children do not get the individual support they need and remain largely unaccepted in regular schools (Smyth *et al.*, 2014; Genova, 2015).

Consequently, there are strong doubts as to whether the right to inclusive education has led to a new direction in policy-making. The question is: why is there so much opposition to the

* [redacted]. The author wishes to thank [redacted] for their valuable comments on an earlier version of this paper. The author also benefited from discussions on the topic at [redacted]. All errors remain the sole responsibility of the author.

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implementation of the right to inclusive education? This question is worth asking, since greater attention is now being paid to inclusive education in debates on human rights. This is reflected, for instance, in General Comment No. 4 on the Right to Inclusive Education, which was recently issued by the UN Committee on the Rights of Persons with Disabilities (CRPD Committee) (Committee on the Rights of Persons with Disabilities, 2016). Despite such renewed interest, not many scholarly works are currently available on the right to inclusive education (see, however, Broderick, 2015; de Beco, 2014; Byrne, 2013; Arnardóttir, 2011). The reasons for its lack of implementation, which is the subject of the present paper, still remain overlooked to this day.

The focus of this paper is global, since it concentrates on theoretical questions that touch upon the goal of inclusive education according to the CRPD. However, it does pay particular attention to the problem in the context of Western European countries, where disabled children are frequently enrolled in so-called 'special schools' (Inclusion Europe, 2011; Ebersold, 2011), which usually refer to segregated settings established especially for these children. Besides leading to their exclusion from mainstream settings, these special schools generally provide a lower standard of education and decrease their pupils' chances as future adults (Global Campaign for Education and Handicap International; Connor and Ferri, 2007).

This paper examines the question by distinguishing between the concept and practice of inclusive education. The first question it asks is: what sort of right has been created by international law? The second question it asks is: what prevents its implementation on a pragmatic level? These two dimensions consider inclusive education as a right and as a reality, respectively. Both dimensions are usually conflated and seen as a single issue. This has led to the existence of a right that has little or no impact in practice, thereby undermining its very legitimacy. While both dimensions are interrelated and the chosen approach of addressing each question separately might seem ill-considered, this approach helps in the examination of just how opposition to the implementation of the right to inclusive education can be overcome.

In order to resolve the question as to why there is so much opposition to implementing the right to inclusive education, this paper explores the very meaning of inclusive education by utilising concepts borrowed from different disciplines. More precisely, it aims to resolve the challenges of its practical implementation as identified in the field of disability studies through the application of political philosophy. It attempts thereby to critically analyse a legal norm with the adoption of a specific interdisciplinary approach. We hope that this approach will give human rights practitioners and organisations fresh direction in their appraisal of the right to inclusive education and will assist them in incorporating questions from other disciplines into their works.

Accordingly, the paper is divided into four parts. Following the introduction, Section II begins by tracing the normative evolution of the concept of inclusive education and exploring its ideal by expanding on some central conclusions about how disability is viewed from the perspective of disability studies.[1] In the British context, disability studies have generally revolved around the so-called 'social model of disability'. Some scholars have examined how law can be viewed from the perspective of disability studies (Kanter, 2011; Mor, 2006) and how the social model has influenced the meaning of disability in the CRPD (Kayess and French, 2008; Traustadóttir, 2009; Bartlett, 2012; Harpur, 2012; Degener, 2016). However, the field of disability studies has not yet become a source of guidance in researching particular rights protected by this Convention. Section III examines more closely the practice of inclusive education in order to tease out the obstacles to inclusive education with particular reference to autism. It goes on to draw upon political theory in attempting to incorporate the element of actual achievability into the ideal of inclusive education. One scholar, who conducted research on this issue, did manage to establish a

1 Disability studies is a multidisciplinary field that analyses the consequences of viewing disability as a social rather than as an individual phenomenon (Roulstone *et al.*, 2012; Mallett and Runswick-Cole, 2014).

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normative framework for the provision of equal educational opportunities for disabled children (Terzi, 2004; 2008; 2014), but stopped short of providing justification for the achievement of inclusive education. In order to provide this sort of justification, this paper brings to bear two particular theories of justice, namely capability theory and recognition theory, which it combines in order to highlight the persisting opposition to the implementation of the right to inclusive education.

II. Conceptual issues: inclusive education as a right

2.1 Normative evolution of the concept

An examination of the concept of inclusive education first calls for an enquiry into its normative evolution. Neither the International Covenant on Economic, Social and Cultural Rights (ICESCR) nor the Convention on the Rights of the Child (CRC) provide for the right to inclusive education.[2] It is only gradually that the goal of inclusive education has become part of the human rights discourse. It was initially enunciated at the World Conference on Education held in Jomtien in 1990. The ensuing World Declaration on Education for All (Jomtien Declaration) declared that '[s]teps need to be taken to provide equal access to education to every category of disabled persons as an integral part of the education system'.[3] The Standard Rules on the Equalization of Opportunities for Persons with Disabilities (Standard Rules) adopted in 1993 also recommended that '[e]ducation for persons with disabilities should form an integral part of national educational planning, curriculum development and school organisation'.[4] It added that '[e]ducation in mainstream schools presupposes the provision of interpreter and other appropriate support services' and that '[a]dequate accessibility and support services, designed to meet the needs of persons with different disabilities should be provided'.[5] By recognising the need for improvement both in accessibility and in support for disabled children, these international legal instruments laid the groundwork for the right to inclusive education.

An important milestone in the promotion of inclusive education was subsequently reached in 1994, when the UNESCO World Conference on Special Needs Education took place in Paris. The resultant Salamanca Statement and Framework for Action on Special Needs Education (Salamanca Statement) was the first international legal instrument to specifically uphold the goal of inclusive education. It provided that 'those with special educational needs must have access to regular schools which should accommodate them within a child-centred pedagogy capable of meeting these needs' and that 'regular schools with this inclusive orientation are the most effective means of combating discriminatory attitudes, creating welcoming communities, building an inclusive society and achieving education for all'.[6] The Salamanca Statement also recommended taking a series of measures for that purpose even though they were not legally binding. This statement was the starting point for putting the goal of inclusive education on the international agenda by encouraging educational reforms to open up education systems to an ever a wider variety of learners (Ainscow, 2015).

2 Art. 2 of the CRC nonetheless lists disability as a prohibited discrimination ground, and Art. 23(3) of the CRC states that disabled children must have access to education 'in a manner conducive to the child's achieving the fullest possible social integration and individual development'.

3 Art. 3(5), Jomtien Declaration.

4 Rule 6(1), Standard Rules.

5 Rule 6(2), Standard Rules.

6 Para. 2, Salamanca Statement.

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Nonetheless, there were still doubts about whether inclusive education had to be the rule in all circumstances. The Standard Rules recognised that '[i]n situations where the general school system does not yet adequately meet the needs of all persons with disabilities, special education may be considered' but 'should be aimed at preparing students for education in the general school system'.[7] While special education was linked to the goal of inclusive education, there was still room for exclusion from mainstream settings albeit on a temporary basis. The Salamanca Statement likewise recommended to states 'to adopt as a matter of law or policy the principle of inclusive education, enrolling all children in regular schools, *unless there are compelling reasons for doing otherwise*'.[8] It also provided that 'the fundamental principle of the inclusive school is that all children should learn together, *wherever possible*, regardless of any difficulties or differences they may have'.[9] Meanwhile, the UN Committee on the Rights of the Child had recommended that inclusive education should be the objective for the education of disabled children (Committee on the Rights of the Child, 2007). However, it also recognised that 'the measure in which the inclusion occurs, may vary' and that '[a] continuum of services and programme options must be maintained in circumstances where fully inclusive education is not feasible in the immediate future' (Committee on the Rights of the Child, 2007, para. 66). This prudent and discreet language diluted the radical meaning of inclusive education and turned it into a somewhat loose and elastic notion (Byrne, 2013).

Not surprisingly, then, there was disagreement during the CRPD's negotiations as to whether or not inclusive education had to be the rule. The initial version provided for both inclusive and special education.[10] This shows that there were markedly different opinions regarding the education of disabled children amongst the Convention's drafters. After a proposal that committed states to 'the goal of inclusiveness of their general education systems',[11] it was decided that the CRPD would guarantee inclusive education for all disabled people. The drafters of the CRPD thus eventually agreed in favour of the right to inclusive education. By stipulating that 'States Parties shall ensure an inclusive education system at all levels and lifelong learning', Article 24(1) of the CRPD removed any precautionary language from the Convention. Some twenty years after the Salamanca Statement, the goal of inclusive education was given an explicitly legal basis under international law.

The CRPD became the first legally binding international legal instrument to proclaim the right to inclusive education. As noted by a number of scholars, this Convention builds on the social model of disability (Kayess and French, 2008; Traustadóttir, 2009; Bartlett, 2012; Harpur, 2012; Lord and Stein, 2009).[12] It is worth spelling out the leading idea, since the social model will be used to shed light on what is meant here by 'inclusive education'. Originating from the UK, the social model was described for the first time as a reaction to the medical model by the Union of the Physically Impaired against

7 Rule 6(3), Standard Rules.

8 Para. 3, Salamanca Statement, emphasis added.

9 Para. 7, Salamanca Statement, emphasis added.

10 Draft Art. 17(3) of the CRPD provided that 'where the general education system does not adequately meet the needs of persons with disabilities special and alternative forms of learning should be made available'. See Report of the Working Group to the Ad Hoc Committee (2004). A/AC.265/2004/WG/1, Annex 1, ‹www.un.org/esa/socdev/enable/rights/ahcwgreportax1.htm› (accessed 4 July 2017).

11 EU, 'European Union Proposal for Article 17', ‹http://www.un.org/esa/socdev/enable/rights/ahcstata17sscomments.htm#eu› (accessed 4 July 2017); Australia, 'Draft Article 17 EDUCATION', ‹http://www.un.org/esa/socdev/enable/rights/ahcstata17sscomments.htm#australia› (accessed 4 July 2017).

12 This is reflected in Art. 1 of the Convention, which states that disabled people 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'.

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Segregation (UPIAS). For them (UPIAS, 1976, p. 4), '[di]sability is something imposed on top of our impairments, by the way we are unnecessarily isolated and excluded from full participation in society'. According to the social model, the issue of disability is therefore distinct from that of impairment (Barnes and Mercer, 2010; Shakespeare, 2013). This view of disability was subsequently taken up and theorised by several scholars who contended that disability is a form of social oppression resulting from societal organisation (Oliver, 2009; Finkelstein, 1980; Campbell and Oliver, 1996). The Convention therefore aims not only to preserve the dignity of disabled people by providing them with optimal prospects for autonomy, but also to abolish the various mechanisms that exclude disabled people from society. Inclusion is indeed one of the general principles that must be implemented by states parties to the Convention.[13]

In order to give effect to the right to inclusive education, states parties to the Convention must ensure that '[p]ersons with disabilities are not excluded from the general education system on the basis of disability'.[14] These states are not only forbidden to deny education to any disabled children, but are also required to allow all of them to attend regular schools. To facilitate this, they must provide reasonable accommodation to such children,[15] as failure to do so amounts to discrimination.[16] As stated by the CRPD, reasonable accommodation should be a 'priority [matter] and should be free of charge' (CRPD, 2016, para. 17). While the European Court of Human Rights has been addressing the exclusion of Roma children from mainstream settings on the basis of disability in several cases including the *D.H. and others v. Czech Republic* case,[17] it has recently recognised the obligation to make reasonable accommodation available to disabled people in the context of education in the *Çam v. Turkey* case.[18] Referring to the CRPD, it ruled that failure to comply with this obligation is a violation of the European Convention of Human Rights.[19]

The CRPD also enumerates the steps states parties to the CRPD must take in order to bring about an 'inclusive education system'. It is worth noting that such steps do not all have to be taken immediately, since the right to education mainly falls under the category of economic, social and cultural rights. As with the ICESCR, the CRPD provides that these rights are subject to progressive realisation.[20] States parties to the Convention, therefore, may delay in fulfilling some of their obligations to implement the right to inclusive education. This does not mean that they must make no effort whatsoever to reach the objective or that they may postpone such effort indefinitely. They 'must commit sufficient financial and human resources … to support the implementation of inclusive education, consistent with progressive realisation' (CRPD, 2016, para. 67). This means they must allocate a budget to bring about the full realisation of the right to inclusive education within a reasonable period of time.

On the basis of the CRPD, the above-mentioned measures can generally be divided into four categories: accessibility, support provision, teacher education and awareness-raising. First, Article 9

13 Art. 3(c), CRPD.

14 Art. 24(2) (a) and (b), CRPD.

15 Art. 24(2)(c), CRPD.

16 Art. 2, CRPD. The duty to provide reasonable accommodation is also especially provided for with regard to the right to inclusive education in Art. 24(2)(c) of the CRPD.

17 *D.H. and others v. Czech Republic* (Application no. 57325/00), 13 November 2007. See also *Sampanis and others v. Greece* (Application no. 32526/05), 5 June 2008; *Oršuš and others v. Croatia* (Application no. 15766/03), 16 March 2010; *Horváth and Kiss v. Hungary* (Application no. 15766/03), 29 January 2013.

18 *Çam v. Turkey* (Application no. 51500/08), 23 May 2016, para. 67. The case concerned the refusal of a music academy to enrol a blind woman, and the lack of any steps to examine how to accommodate her blindness.

19 *Ibid.*, paras 64 and 69.

20 Art. 4(2), CRPD. Art. 4(2) of the CRPD provides for a similar clause to Art. 2(1) of the ICESCR.

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(1) of the CRPD generally guarantees access to '[b]uildings, roads, transportation and other indoor and outdoor facilities, including schools'. Infrastructure, including classrooms and toilets, therefore, must be made accessible to disabled people (CRPD, 2016). While this will make it more difficult for schools that were established without those children in mind, it is imperative that new schools meet these conditions. Second, Article 24(2)(d) of the Convention requires that '[p]ersons with disabilities receive the support required within the general education system, to facilitate their effective education'. Disabled children must receive support adapted to their individual needs so that they can be educated in mainstream settings (Inclusion International, 2009). This includes not only personal assistance, but also equipment and materials, such as Braille and sign language.[21] Third, Article 24(4) of the CRPD requires teachers to be trained in 'the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities'. It is therefore necessary to train teachers to deal with disabilities through both teacher core training and continuing education (Global Campaign for Education and Handicap International). School curricula must also be flexible enough so that objectives can be differentiated according to all children's abilities and skills (CRPD, 2016). Fourth, Article 8(2)(b) of the CRPD provides for measures fostering 'at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities'. In order to protect disabled children from all forms of prejudices and stereotypes, it is important to engender social attitudes that accept human difference. This can have a positive effect on the implementation of the entire Convention. Awareness-raising is an essential aspect of inclusive education and includes the development of 'anti-bullying programmes' (CRPD, 2014, para. 5).

2.2 Origin and definition of the concept

The origins of inclusive education are relatively heterogeneous (Armstrong *et al.*, 2011). The concept of inclusive education itself is rooted in a struggle for 'social justice' (Rioux and Pinto, 2010, p. 638; Liasidou, 2012a, p. 12), and thereby represents a kind of value for measuring education. Inclusive education, therefore, is not an empirical issue, but a moral one.[22] The adoption of the CRPD has led to a rights-based approach to the issue. The question is no longer about why inclusive education is beneficial to disabled children, even though some literature has sought to demonstrate this, but how it can actually be achieved. The concept of inclusive education has thus entered into the legal domain, while of course also remaining in the educational sphere.

The question now is: what is the meaning of inclusive education in a *legal* sense? Raising such a question is necessary if states parties to the CRPD are to be made accountable for their compliance with international human rights law. This question requires an examination of what the ideal of inclusive education might actually imply and what a fully 'inclusive education system' should look like. While the Convention indicates how to implement the right to inclusive education, it does not define the concept of 'inclusive education' as opposed to other concepts such as 'reasonable accommodation'.[23] There are some indications about what it is not. Inclusive education is obviously not equal to education in special schools for children with specific kinds of impairment (CRPD, 2016). Nor is it equal to integration, which gives disabled children access to

21 Art. 24(3), CRPD.

22 As correctly explained by Anastasia Liasidou, debating about the advantages of inclusive education is like examining the reasons for the abolishment of slavery (Liasidou, 2012a).

23 Art. 2 of the CRPD defines the concept of 'reasonable accommodation' as 'necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms'.

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regular schools without adapting the general education system to their needs (Armstrong and Barton, 2007; Thomas, 1997; Liasidou, 2012a. See also Committee on the Rights of the Child, 2007).

Within the field of disability, the concept of inclusive education has emerged as a reaction to its opposite, namely special education (Thomas, 2013). From this viewpoint, the aim is to have as many disabled children as possible in regular schools. In other words, all schools should welcome these children, whatever the practical implications may be. However, this is a misguided and simplistic approach to the issue. The target should not be the enrolment of the highest possible number of disabled children in regular schools. Inflating numbers can even achieve the opposite to inclusion if unaccompanied by a fuller participation in school life (Connor and Ferri, 2007). This has sometimes been done by establishing separate classes for disabled children, which are ambiguously named 'inclusion centres' or 'inclusion units', so as to avoid the exclusion of disabled children from mainstream settings (Norwich, 2013, p. 109; Liasidou, 2012a, p. 25). Too much attention has been given to *where* education takes place and not enough attention to *how* it takes place.

One consequence is that much of the debate has revolved around the question of whether special schools should be shut down in order to reach the goal of inclusive education. These schools were initially created to offer better care to disabled children (Slee, 2011). They were established in some Western European countries, such as Belgium, Germany, the Netherlands, Austria and Switzerland (WHO, 2011; European Commission, 2012; Inclusion Europe, 2011). In England and Wales, despite a commitment to keep children with 'special educational needs' in regular schools (Norwich, 2013; Armstrong and Barton, 2007), many disabled children are still enrolled in special schools (WHO, 2011; European Commission, 2012).[24] Western European countries have thus had a difficult time reducing the number of disabled children in such schools.

A purported explanation for this phenomenon is that the general education system is organised around a binary division into normal and abnormal through a process of individualisation (Foucault, 1975). With regard to disability, this division is made according to impairment, which would justify particular forms of regulation for those who are considered disabled (Tremain, 2005). This has led to a high level of categorisation that gets regular schools to believe that certain children are unmanageable and, as a result, need to be educated in segregated settings.

As can be seen, the continuation of special schools has become a burning issue with regard to the right to inclusive education. It is worth noting that the CRPD does not prevent states parties from establishing such schools, but rather remains silent on the issue. The lack of reference as to whether special schools are contravening the Convention does not stop arguments and spurs debate about the usefulness of these schools. It reflects the delicate position of the drafters of the CRPD, as well as the difficulties they faced in removing any qualification to the right to inclusive education. The result is that the CRPD, so it seems, offers governments a certain degree of leeway regarding its practical implementation. Although the Convention largely succeeded in reducing the existing ambiguity with regard to the education of disabled people, it did not succeed in removing it completely.

What, then, is the correct meaning of 'inclusive education' under the CRPD? The CRPD considers that inclusive education

> 'involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision

24 It moreover turns out that those children found to have emotional and behavioural difficulties, who often belong to ethnic minorities, are over-represented in special schools (Tomlinson, 2015). It is worth adding that the term 'special education' is used to refer to the support provided to disabled children within mainstream settings in the UK.

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> serving to provide all students of the relevant age range with an equitable and participatory learning experience and environment that best corresponds to their requirements and preferences.' (CRPD, 2016, para. 11)

This way of defining the concept of inclusive education implies that states parties to the Convention make constant efforts to recognise the varied needs of disabled children and change the different practices of education in order to effectively develop their abilities and skills. Inclusive education does not mean identifying the 'problems' of disabled children so as to help them close the 'gap' (Ebersold, 2015; Moore and Slee, 2012). Inclusive education means that regular schools must be able to embrace human difference in all its various aspects instead of focusing only on a specific type of pupil. In other words, the concept of inclusive education must be considered as a kind of process by means of which schools are enabled to address the individual needs of all children alike.

This definition still does not particularly describe the ideal of inclusive education, but rather the approach towards that ideal. Although the CRPD provides what needs to be done to get to this ideal, it does not articulate what could be a truly 'inclusive education system'. As regards the approach to the meaning of inclusive education by the CRPD, there also remains a degree of vagueness in stating that such education seeks to provide disabled children 'with an equitable and participatory learning experience and environment' (CRPD, 2016, para. 11).

An 'inclusive education system' arguably would require working through the entire process of developing education systems so that disabled children can effectively be educated alongside other children. This involves a radical and thorough adaptation of the general education system. Such adaptation must aim to apply a 'universal design' to education – a concept that was originally developed in architecture.[25] 'Universal design' requires not only a focus on the way in which regular schools address the individual needs of disabled children, but also a focus on the design of education systems that should take into account such needs from the outset (Minow, 2013). All schools should thus be made entirely accessible (Munoz, 2007), disabled children should be provided with adequate individualised support (Inclusion International, 2009) and teachers should be trained continually in how to deal with disabilities (Global Campaign for Education and Handicap International), all of which has not been done adequately at least until now (Inclusion Europe, 2011). The ideal of inclusive education also entails reviewing the whole educational programmes, including the school curriculum, teaching methods and target assessments (Slee, 2011), thereby making these educational programmes available to disabled children. It moreover involves promoting a positive image of disabled people in all aspects of school life.

It is finally worth noting how such an ideal is well aligned with the social model of disability on which the CRPD is based. If the cause of disability is not to be found in the individual but in the environment, the failure for the inclusion of disabled children in mainstream settings is due not to these children's lack of capacity, but to the inability of education systems to adapt to the varied needs of all children. The solution therefore is to try and change that environment so that these systems are able to meet these varied needs. The goal of inclusive education denotes a transformation of education systems to make all such systems inclusive for all children. This way of approaching inclusive education is very close to the social model, because it involves removing social and environmental barriers. By providing for the obligation to establish an 'inclusive education system', it can even be argued that the CRPD has fully embraced the model in question. It is in the proclamation of the right to inclusive education that the Convention probably comes closest to advancing a social model of disability.

25 Art. 2 of CRPD defines 'universal design' as 'the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design'.

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III. Practical issues: inclusive education as a reality

3.1 Obstacles to inclusive education

There is no doubt that the CRPD's objective with regard to the education of disabled people is ambitious. The right to inclusive education involves a systematic reform of the general education system so as to include disabled children in mainstream settings in the same way as their non-disabled peers. However, the question is whether this is doable whatever the circumstances.

This question relates to the larger issue of the participation of disabled people in society. Disabled people have much lower life chances, and often face harsh conditions to this day (WHO, 2011). For a long time, disability has been considered as an anomaly in the body or mind that had to be rectified. Disabled people started to react to this view of disability, and this gave birth to the social model of disability. The marginalisation of disabled people received even greater attention with the adoption of the CRPD. States parties to the Convention should not only aim to redress disparities in economic power, but also remedy the social structures that have led to such marginalisation.

The obstacles to inclusive education perfectly demonstrate the resistance against any steps to enable disabled people to participate in society. Discussions as to whether the alleviation of all these obstacles is feasible reflect deeper concerns about the issue. While there is certainly a lack of effort on the part of governments to address this issue, the question is whether a perfect state of inclusiveness can ever become a reality. Limitations in achieving social change are an inescapable fact of life, since society cannot be organised in a way that takes account of everyone's physical and mental characteristics (Barclay, 2012; Shakespeare, 2013). In other words, there may be limits to the attempt to change the environment to address the varied needs of disabled people.

Accordingly, some scholars have argued that inclusive education will never be fully achieved and that doing so is not even desirable (Anastasiou and Kauffman, 2012). This point needs further exploration. It cannot be denied that redesigning education systems to include all disabled people can and may create unforeseen difficulties. No matter what progress is made, there will always be issues that might hinder some disabled children from getting access to inclusive education. Such a situation could arise, for example, with the sudden arrival of disabled children whose needs would call for unanticipated measures. There are also significant variations in the level of disability. Challenges therefore can arise from both internal and external factors, some of which cannot be easily altered in practice (Norwich, 2014).

Autism may be an example to illustrate the point. In order to deal with autism, regular schools should adopt several kinds of measures for the removal of social and environmental barriers. This requires continual learning by the teachers and a structured routine for the children while ever diversifying approaches to teaching and building on these children's particular interests (Lindsay *et al.*, 2014; Jordan, 2008). With adequate teacher training, states can thus ensure that autistic children receive the required level of support and are included in mainstream settings. It is possible, therefore, to change the environment in a way that is adapted to the requirements of autism so that autistic children feel safe and can genuinely take part in school life. The question, however, is whether the creation of such an environment can always be carried out through to the end. While it may to a certain extent be successfully done, it may at other times require too much adaptation to allow autistic children to interact socially with other children. Certain communication skills, such as the use of common idioms and aspects of non-verbal language, may never be levelled up (Ravet, 2011).[26] In order to benefit from learning, autistic children need specific measures that take account of their different abilities, which will generally take the form of one-to-one assistance. Schools moreover create a busy and often disruptive social atmosphere

26 This differentiates autistic children from children whose first language is not English and who can acquire these skills over time (Ravet, 2011).

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and are time and again subject to unexpected changes that disturb class routine (such as fire-drills and absent teachers), and these situations and changes can have a particular impact on these children and result in overwhelming barriers for them (Humphrey and Lewis, 2008; Lindsay *et al.*, 2014). In order to avoid social interaction or even prevent outbursts, there is sometimes no way to deal with the situation other than isolating the child. The way forward is to keep autistic children in a separate classroom within regular schools, thereby achieving the opposite to inclusiveness and further contributing to their marginalisation. Although steps can be taken to make regular schools more autistic-friendly (a move that may simultaneously benefit other children), certain practices cannot be altered without altogether reducing the educational opportunities of non-autistic children. The alternative then is to educate autistic children in environments that are fully adapted to their particular needs. Some research therefore has suggested that special schools are perhaps better placed to provide intensive support to some disabled children (Evans and Lunt, 2002).

Another aspect of the problem is that there are practical limits to differentiation in the school curriculum. Amendments to this curriculum can help but not remedy all issues related to disability (Shakespeare, 2014). It would be hard, for instance, to imagine having a general education system where standards for written language would be abandoned or drastically reduced in order to accommodate intellectual disabilities (Norwich, 2014). The price, once more, would obviously be much too high for all the other children. This shows not only that there are limits to the steps that can be taken to implement the right to inclusive education, but also that a 'universal design' can be very difficult to apply in any area of education. All this confirms that education systems may never be completely adaptable to the needs of all disabled children. Indeed, it is highly unlikely that any 'inclusive education system' will ever reach perfection.

What can we conclude from the fact that no completely 'inclusive education system' will ever be established? There are two different conclusions to be drawn, both cutting against each other. On the one hand, it is said that the particular needs of disabled children cannot always be met in regular schools: this is argued by those in favour of special schools (Anastasiou and Kauffman, 2011; 2012). And it is true that removing certain barriers towards this end could have disproportionate consequences. However, the establishment of education systems developed just for non-disabled children de facto leads to excluding those who are disabled. On the other hand, it is said that the general education system is not yet truly inclusive: this is argued by the strong protagonists of inclusive education (Slee, 2011). And it is true that there are many cases in which only minimal or minor adaptations are made. Regular schools do not appear to be open equally to all children. However, to seek the creation of an utterly flexible education system is to seek to deny reality. Such discussions exhibit how easy it is to get bogged down in an ideological debate between those who advocate for inclusion 'as far as possible' and those who advocate for inclusion 'without exception' – that is, those who advocate for 'moderate inclusion' and those who advocate for 'universalist inclusion', respectively (Norwich, 2014, p. 132). The problem is that both positions fail to recognise that inclusive education must be seen as an ever incomplete and constantly evolving process (Hausstätter, 2014). As we have already explained, inclusive education is not a 'set' objective, but a 'movable' one. It is also possible to make particular adjustments that leave inclusive education generally intact, even if some of the barriers should appear insurmountable. It is therefore not a question of moderate or universalist inclusion, but one of trial and error and of balancing conflicting interests. Given that the final objective is unattainable, it is even more important to hold education systems under permanent scrutiny so that upcoming challenges can be overcome.

Instead of adopting a more or less radical approach to the issue, it might be useful to approach it from the perspective of the underlying values of human rights. One of these values that has become intrinsically linked to international human rights law and that particularly bears upon disabled people is the notion of human dignity (Donnelly, 2013; Basser, 2011). In relation to inclusive

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education, what matters in this regard is not to create a situation of exclusion that denies the equal worth of disabled children. The question, therefore, is the extent to which mainstream settings are respecting their human dignity and what can be done so that these settings meet the requirement (Hedge and Mackenzie, 2012). As highlighted with the example of autism, the well-being of disabled children might dictate an unconventional route to ensure the quality of their education. The point does not a priori rule out the possibility of transforming education systems, but avoids a purely instrumental vision of inclusive education (Terzi, 2014). Despite its sweeping scope, human dignity can provide a benchmark for the enforcement of the goal of inclusive education in that it establishes what is required for such education to be ethically acceptable.

The problem, though, is how to connect the 'incompleteness' of inclusive education with the social model of disability. As the social model inspired the drafters of the CRPD, the understanding of inclusive education must conform to its view of disability. While acknowledging the relevance of the social model for discerning the nature of disability, several scholars have criticised it for underestimating the actual impact of impairment (Shakespeare, 2014; Terzi, 2004; Morris, 2001; Barclay, 2012) or, at least, for discounting the causal relationship between disability and impairment (Anastasiou and Kauffman, 2013; Corker and French, 1999; Shakespeare, 2013; Tremain, 2005). The general allegation is that the social model of disability would have buried the impairment. While the purpose of the present paper is not to examine in depth this allegation, it is worth noting the extent to which such controversy surrounds the ideal of inclusive education. The problem is not so much that, even in a barrier-free world, impairment would still play a role (should such a world exist), but rather that it is impossible to meet the particular needs of disabled children for the goal of inclusive education without directing some attention to the notion of impairments. This is because these very impairments will determine how education systems must be adapted to the particular needs in question. While the identification of impairments leads to labelling, it is unavoidable if the objective in question is to be met (Ravet, 2011). This touches in particular intellectual disabilities (such as autism), since learning is very much related to cognitive faculties. Both the internal and external factors of disability must be taken into consideration – factors that the medical model and social model would each in their own way have downplayed (Bickenbach *et al.*, 1999).

That being said, it is important to recall that the original intention of the social model of disability was not to deny the very existence of impairment. According to its protagonists, this model only aims to provide a 'tool' to remove social and environmental barriers to the participation of disabled people in society (Oliver, 2013; Oliver and Barnes, 2012; Barnes, 2012). The social model is ultimately orientated towards bringing about social changes. Similarly, the CRPD recognises the existence of impairment but relates this impairment to those social and environmental barriers, and all its rights indeed hinge on their removal (Degener, 2016; Bartlett, 2012). The idea is to produce a shift in focus from the individual to the environment in order to address the disadvantages faced by people with impairments. Using the social model as a way of producing this shift in focus is particularly compelling in the context of education given the strong opposition to the implementation of the right to inclusive education.

Such opposition is currently even harder to overcome given the current features of the political context in which the goal of inclusive education operates. Education reflects not only present-day society of which it is part but, more importantly, what that society will be like in future generations. One important obstacle in this regard is the growing influence of neoliberal policies upon education in Western European countries. The case needs to be made not because human rights disregard economic arguments altogether, but because economic growth is not their chief orientation. The suggestion of excessive neoliberal pressure fits in well in the materialist orientation of (traditional) disability studies associated with the advent of capitalism and the exclusion of disabled people from the workplace (Goodley, 2011). As indicated by several scholars,

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education has become a means of reproducing the fundamental doctrines of economic liberalism with its ostensible purpose of enabling future adults to compete in the market systems of the global economy (Liasidou, 2012b; Slee, 2011). It seeks to promote competitiveness and enhance employment by the improvement of competencies and the valuation of merit. As a result, the role of education has focused on the development of 'entrepreneurship' in order to enable pupils to satisfy their own needs by participating in capital markets (Masschelein and Simons, 2005). The ultimate objective is to produce citizens who can respond to the demands of such markets and who thus become the subjects of 'neoliberal-ableism' (Goodley, 2014, p. 26).

The ideal of inclusive education is at odds with the furthering of this neoliberal agenda. In such a political context, schools are supposed to take part in the enhancement of competitiveness and contribute to the production of economic growth by developing pupils' skills and abilities towards that end. By contrast, inclusive education is a question of 'social justice' that promotes access to inclusive education for disabled children. This aim runs counter to the general demands of capital markets.

The problem is particularly reflected in the standards pupils are supposed to achieve in Western European countries. These standards provide a very narrow view of education by restricting the school curriculum to acquiring literacy, mathematical and science skills, and this restriction adversely affects disabled children (Runswick-Cole, 2011). These standards also create an atmosphere of constant evaluation and a process of hierarchisation (Thomas, 2013). This is in fact a global trend in free-market advanced economies.[27] In order to attract 'good' pupils and score highly in educational rankings, schools try and uphold such standards by privileging those who will be able to perform well (Mallett and Runswick-Cole, 2014; Liasidou, 2012a). Where scoring highly in educational ranking is primary, the arrival of a disabled child could be seen as a 'threat' by such schools (Goodley, 2011; Moore and Slee, 2012). Parents are therefore advised to look elsewhere, preferably at special schools where that child's individual needs can be met (Slee, 2011).

This does not mean that including disabled children necessarily falls outside the neoliberal agenda. When inclusive education is attempted from a neoliberal perspective, the question tends to be how to keep these children in regular schools but not how to improve the whole education system in order to make it inclusive. This is why inclusive education is seen merely as a 'technical' issue that aims to help disabled children achieve the standards imposed on all children alike. However, inclusive education will never become reality if these standards cannot be questioned (Connor and Ferri, 2007) and decoupled from neoliberal thinking (Slee, 2011). Such education lacks perspective unless it is reorganised so that education systems may cope better with human difference instead of the other way around. An emphasis on human difference within the standards to be covered in the school curriculum would represent a radical step forward in education. Education would no longer serve to perpetuate competitiveness, but would foster the values of equality, diversity and community (Runswick-Cole, 2011; Slee, 2011).

3.2 Achieving inclusive education

The acknowledgement of the ultimate 'unachievability' of an 'inclusive education system' is itself problematical. It results in a gap between idealism and pragmatism. While international human rights law offers disabled people a right to inclusive education, not all obstacles to inclusive education can be alleviated in practice. By taking over the goal of inclusive education, the CRPD, however inadvertently, because of the very authority of international law, may have closed the door to any discussion about its achievability. The situation now is that states parties to the Convention must endeavour to implement the right to inclusive education and refrain from

27 This trend is promoted, for instance, by the Programme for International Student Assessment (PISA) in the Organisation for Economic Co-operation and Development (OECD).

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overtly arguing that such implementation is impracticable. The problem is that, while the right to inclusive education is framed in an almost unqualified manner, there are limits to the extent of which steps can be taken to create an 'inclusive education system'. In short, there is a discrepancy between the concept and practice of inclusive education.

The question is how to overcome that discrepancy. According to Hansen (2012), there is a need to develop an understanding of inclusive education that integrates its potentials for achievability. In other words, inclusive education is something that should be explored as incomplete from the start. We must approach the obstacles to inclusive education in a holistic manner. Hansen (2012) provides a way of doing so by arguing that exclusion is somehow inherent in inclusion and that avoiding too much human diversity is a necessary evil in order to secure the existence of inclusive communities. Putting boundaries to inclusive education, therefore, would be necessary for its own survival. We consider that such a solution leads to cutting corners, since it gives too much priority to pragmatism over idealism and results in giving up the race before it has even started. The correct approach is not to seek justification for the limits to the goal of inclusive education, but rather to establish the legitimacy of making efforts towards that goal despite such limits. We must investigate whether it is possible to incorporate the element of actual achievability into the ideal of inclusive education.

Political philosophy can help us to explore pragmatic solutions to the obstacles to inclusive education. One of the most promising approaches in that regard is capabilities theory, as developed by Sen (1992; 1999) and applied to disabled people by Nussbaum (2007). Capabilities are people's opportunities to achieve a number of human functionings so that they can have the kind of life they have reason to value. These capabilities create entitlements for each individual that must be fulfilled through a fair distribution of resources. While Sen is silent on what capabilities must be strengthened, Nussbaum (2007; 2011) proposes a list of ten capabilities which are indispensable for a 'life that is worthy of human dignity'. She considers that people should be able to achieve a minimum 'threshold level of each capability' if they are to enjoy true human functioning (Nussbaum, 2007, p. 72).

Capabilities theory recommends that, instead of allocating a fixed number of resources for people's entitlements, this number should be allocated in such a way that it can be converted into actual human functionings (Anderson, 2010). Unlike utilitarianism, this theory does not aim to maximise the overall good in a similar way for all people, but is more sensitive to human difference. It acknowledges, for instance, that disabled people need more resources than other people to achieve a certain degree of human functioning (Sen, 1992; 1999). Terzi (2008; 2014) therefore argues that capabilities theory makes allowances for the allocation of a higher degree of resources to disabled children so that they can achieve 'fundamental educational functionings'. The allocation of such resources is necessary to give them equal access to these functionings. Capabilities theory thus provides a normative framework for the fulfilment of entitlements to 'fundamental educational functionings' for disabled children on an equal basis with other children. The failure to enhance their capabilities by setting up the means to provide them with adequate education fails to respect their human dignity (Nussbaum, 2011).

There are nonetheless doubts as to whether the capabilities theory actually leads to the implementation of the right to inclusive education. Several scholars have been particularly critical of Nussbaum's approach. They have argued that some disabled people will never be able to reach her advocated minimum threshold level of the designated capabilities (Silvers and Stein, 2007; Silvers and Francis, 2009). The question of whether these people still have entitlements to 'fundamental educational functionings' remains, however. To return to the above-mentioned example, some autistic children will never be able to engage in certain forms of social interaction despite the high level of support provided. Conversely, those who could go beyond the minimum threshold level of the various capabilities might not be given the resources they need to further

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develop their 'fundamental educational functionings'. Capabilities theory does not imply that one has to 'level the playing field' in maximising such capabilities (Silvers and Stein, 2007). This levelling of the playing field would have allowed disabled children's educational opportunities to be equalised by providing full-time one-to-one assistance in any circumstances.

The problem is also whether capabilities theory is in fact intended to bring about social changes. The CRPD provides that education systems must become inclusive, and there should be arguments made to transform these systems towards that end. While the capability theory has regard for the environment, it is unclear whether it aims to achieve participation in society for its own sake. This theory does not explain whether such participation is a goal in itself or just a means to enhance capabilities. Even if segregated education systems may negatively affect these capabilities, it does not mean that they should be replaced by an 'inclusive education system'.

It is worth noting, however, that the conversion of resources into actual human functionings varies according to three types of factors, namely personal, social and environmental factors (Robeyns, 2005). Capability theory, therefore, acknowledges that opportunities to achieve such human functionings depend not only on personal characteristics, but also on social and environmental barriers (Terzi, 2008). Nussbaum (2000, p. 84; 2011, p. 20) uses the concept of 'combined capabilities' by which she understands capabilities that can be developed in combination with the appropriate political, social and economic conditions. She thus acknowledges the importance of the organisation of society for the enhancement of such capabilities. It is uncertain, however, what this means for the environment per se. Although there is consideration for social and environmental barriers in the capability theory, calling for their removal is an altogether different matter. This theory primarily takes the individual as the moral unit of analysis. The environment is just one of the factors that must be taken into account when considering the number of resources needed to fulfil the entitlements or when evaluating the availability of opportunities to achieve certain human functionings. The capability theory does not require changes to this environment for that objective to be reached. It simply remains silent on how to enhance the capabilities, although this may be done by acting on the environment. Accordingly, it does not promote inclusive education, and even pleads for special schools if this turned out to be more suitable for achieving the objective (Nussbaum 2007; 2009; Terzi, 2014).

Therefore, further grounding is necessary to contend that education systems should be transformed. One way to resolve this lack of grounding is to call on recognition theory. Without recognition, there will be a distortion in the formation of our identity that is shaped through our relationships with others (Taylor, 1994). Following from this, Fraser (1998, p. 25) proposes a 'status model' in order to achieve what she calls 'participation parity'. In order to achieve such 'participatory parity', she argues that the recognition of status and the distribution of resources should be treated as part of a unique normative framework (Fraser and Honneth, 2003). Although Fraser does not herself focus on disability, her approach is actually in consonance with the social model of disability (Calder, 2011). The point is not just to allocate resources to disabled people, but also to examine how society regards them. The recognition theory gives justification not only for the empowerment of disabled people, but also for the provision of social arrangements that grant them a social status equal to that of others.

Combined with the capabilities theory, recognition theory offers a way of incorporating the element of actual achievability into the ideal of inclusive education. On the one hand, capabilities theory entails the allocation of resources to provide disabled children with educational opportunities, even if it does not vindicate the goal of inclusive education. It is moreover closely related to the protection of human rights, and Nussbaum uses the notion of human dignity to argue for entitlements to certain human functionings. It can therefore be useful in defining how to address disadvantages related to disability in the context of education. On the other hand, recognition theory places emphasis on the requirement to equalise the social status of all

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members of society, although it does not prescribe how to allocate resources for the accommodation of human difference. The result is that the achievement of inclusive education can be seen as a prerequisite for securing such a social status. Since recognition theory views recognition and distribution as necessarily intertwined, it can make room for bringing capabilities theory into play with a view to determining how to remove social and environmental barriers for disabled children. The recognition theory thereby pushes the capability theory further in that direction. Taking both theories together gives due consideration to the goal of inclusive education. They shift the debate from a simple question of resources to a more sophisticated question of 'social justice'.

This approach may bring us closer to the ideal of inclusive education. It recognises that the general system of education must cater for a wide variety of learners and be able to meet the particular needs of all children, disabled or otherwise. In order to achieve inclusive education, this system must be changed in a manner that ensures the participation of disabled children.

Now let us return to our question: to what extent are the necessary limits to the goal of inclusive education compatible with the right to inclusive education? The starting point is this: education systems must not be designed in a way that suits only some children and oblige others to adapt. They must be set up in the first place so that disabled children can be included in mainstream settings. These children should not have to seek the adoption of specific measures to help them 'fit' into the environment afterwards. Inclusive education goes beyond providing resources to disabled children and requires giving all children 'the chance to share in the common wealth of the school and its culture' (Anderson and Honneth, 2005, p. 144). But, in the end, there is no such thing as an infinitely flexible education system. This does not mean that those who have greater needs must necessarily be segregated. If a further differentiation of education is impossible for some of them, the first thought that should come to mind is whether this is due to the environment. While the individual needs of disabled children may vary extensively, they should not set limits to the goal of inclusive education, but trigger a series of varied responses within education systems so that, over time, these systems become ever more responsive to human diversity.

The last issue that must be addressed once again is the political context. This likewise must be subject to conceptual probing. As we have been saying, education cannot be detached from politics, and any educational strategy necessarily requires that the underlying values of education themselves be subject to questioning. As stated by UNICEF, 'some of the most significant barriers result from the legacy of policies and structures that have influenced attitudes and mindsets and so created resistance to change' (UNICEF Innocenti Research Centre, 2007, p. 17). These prevailing attitudes and mindsets must be challenged, failing which inclusive education may prove intractable even with the best will in the world and the highest possible level of commitment.

The impossibility of detaching education from politics creates another rift between the concept and practice of inclusive education. If this rift is to be overcome, the achievement of 'social justice' must be given a more prominent place than the objectives of economic growth. However, there seems to be great difficulties disconnecting education from neoliberal policies in Western European countries. The question is whether these difficulties can be congruent with the implementation of the right to inclusive education. The answer is: probably not. Inclusive education and neoliberal thinking may to a certain extent pull in the same direction, but they embody values that are ultimately incompatible. The value dimension of this confrontation shifts the debate to the ideological level – a debate that becomes only more heated by the near-absence of any qualification to the right to inclusive education.

The only solution, then, would be to make a patient and concerted effort to uphold further the goal of inclusive education. This may be the only way to resolve the situation at a time when dominant political thinking is getting in the way. There is even a plea for the use of 'guerrilla tactics' to demonstrate that education systems are deficient and to gradually disrupt their operations (Hausstätter, 2014). Such 'guerrilla tactics', however, might only help out in the short

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term to achieve inclusive education. Despite their potential to put a drag on education systems, these 'guerrilla tactics' risk rekindling and replicating the heated ideological debate between advocates of 'moderate inclusion' and those of 'universalist inclusion'. Confronting neoliberal policies will not by itself be sufficient to deflect opposition to implementing the right to inclusive education. In order to ever get to the root of the problem, there must be safeguards to ensure that the furthering of competitiveness does not absolve states from the acceptance of human difference and especially does not result in the spontaneous exclusion of disabled children from mainstream settings. What this paper suggests is that only by redesigning the general education system step by step, and by improving social attitudes continuously but steadily, will the right to inclusive education finally be implemented. Inasmuch as education engenders a greater appreciation by all future adults of the richness of human diversity, establishing an 'inclusive education system' in such a step-wise manner will be the best way of overcoming the current opposition to its implementation.

IV. Conclusion

The CRPD recognises the right to inclusive education. However, this right is a long way from being fully implemented. Although there is almost unanimous agreement about its significant importance for disabled people and calls are repeatedly made for its implementation, policy-making is seriously lagging behind. While recently organising a workshop on the right to inclusive education, we had the opportunity to assemble a number of scholars and activists to exchange perspectives and discuss research needs on the topic. At the very start of the discussions, an intellectually disabled speaker asked the following question with a perplexed look: 'Why is it not happening?' He asked the pivotal question.

In order to answer that question, this paper has examined two separate but related questions: What is the right to inclusive education? What are the challenges of its practical implementation? By distinguishing between the concept and practice of inclusive education, the paper aimed to provide a critical appraisal of the very meaning of inclusive education. It has then claimed that it is possible to ensure that the concept of inclusive education takes up the issues relating to the practice of inclusive education. Through a specific interdisciplinary approach, it has critically assessed the ideal of inclusive education and has tried to throw such an ideal into relief as against the actual obstacles to its achievement. If the right to inclusive education can be understood in a manner that fully takes into account its application, the general education system would be one in which the participation of disabled children would be incorporated into its very own values, notwithstanding the pressure of neoliberal policies in Western European countries. The present paper has suggested that, by taking a step back and exploring how both concept and practice can be reconciled with each other, it is possible to make better sense of the right to inclusive education. We hope that both a clearer picture of the reasons why inclusive education is not yet happening and the possible ways of remedying this problem have emerged as a result.

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