

## Index

- ableism, 37
- acquired brain injury, 1, 11, 21, 52, 70
- Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection of the Rights and Dignity of Persons with Disabilities, 16, 154. *See also* travaux préparatoires
- advance planning, 56, 62
- Airedale NHS Trust v Bland* [1993] AC 789, 161
- Airey v Ireland* (1979) 2 EHRR 305, 81
- animals. *See* dignity, non-human animals
- appropriate measures. *See* specific measures
- Article 12 CRPD, 2–8
- abolition interpretation, 59–65
  - best interpretation principle, 63
  - as civil-political right, 103–4
  - as indivisible right, 108
  - retention interpretation, 65–71
  - significance, 29
  - as socio-economic right, 104–8
- Australian Law Reform Commission, 12, 67–9, 184, 185
- autonomy. *See also* personhood; relational autonomy
- as achievement, 140
  - and advance planning, 56
  - Alex, 118, 131
  - article 8 ECHR, 171
  - and best interests test, 50
  - in bioethics, 166
  - capacity as gateway to, 46
  - and civil-political rights, 25, 144
  - cognitive prosthesis, 131–2
  - competencies, 141
  - and dignity, 164, 166, 168, 170–2, 180, 184, 186
  - and emotions, 119
  - freedom to choose, 63, 120–1
  - and functional test of capacity, 49
  - General Comment No 1, 19, 59, 63
  - hierarchical accounts, 120
  - independence, 115, 116, 123
  - and individualised services, 30
  - and institutionalisation, 45
  - interdependence, 125
  - and mental illness, 41
  - narrative coherence, 63, 121, 123
  - negative and positive liberties, 130, 134
  - non-interference, 89, 115–17, 140
  - and outcome test, 48
  - as personhood, 6, 20, 25, 28, 114
  - and principle of indivisibility of human rights, 28, 143
  - range of options, 143–7
  - rationality, 115
  - and supported decision-making, 33, 52, 140
  - trust and cooperation, 126, 131–2
  - will and preference, 24, 52
- Beasley v Australia*, 208
- Beijing Declaration, 16
- biopsychosocial model of disability, 42
- capacity. *See* legal capacity; mental capacity
- care theory. *See* ethic of care
- case studies, 3
- Alex, 4–5, 114, 117–18, 131, 136–7, 139, 142–3, 147–8, 239
  - Jess, 6, 198–9, 203, 229–30, 232, 243
  - Sesha, 5–6, 170, 190–3, 242
- charity model of disability, 34
- Cicero, 160
- civil and political rights, 75, 77, 100

- differences from economic, social and cultural rights, 83–8
- civil death, 62, 64, 67, 73
- civil-political rights. *See* civil and political rights
- cognitive disability, 11, 241
- cognitive prosthesis, 127–8
- Cold War, 76, 109
- Committee on Economic, Social and Cultural Rights, 86, 90
- General Comment No 5, 207
- Committee on the Rights of Persons with Disabilities, 1
- General Comment No 1, 12, 56, 59, 63–5, 101, 103–4, 106, 118, 129, 220, 224
- General Comment No 4, 80
- General Comment No 5, 99
- General Comment No 6, 199–200, 203–5, 207–17, 220, 226, 227, 229, 242–3
- General Comment No 7, 233–5
- Constitution of the Republic of South Africa*, 178–80
- Convention on the Elimination of All Forms of Discrimination against Women*, 17, 64
- Convention on the Rights of Persons with Disabilities*, 14–20, 121. *See also* Article 12 CRPD; Committee on the Rights of Persons with Disabilities
- article 1, 155, 200
- article 2, 202, 208, 215
- article 3, 155, 204, 214
- article 4, 104
- article 5, 201, 203
- article 6, 217
- article 8, 213, 217
- article 9, 201, 202, 214, 217
- article 10, 95, 201
- article 13, 201
- article 14, 201, 217
- article 15, 217
- article 16, 99, 139, 217, 230
- article 17, 60, 95, 99, 217, 230
- article 19, 99, 147, 177, 206, 214, 230
- article 21, 204, 209
- article 24, 141, 209, 214
- article 25, 60, 147, 148, 177, 206, 230
- article 26, 206, 214, 230
- article 28, 95, 230
- article 29, 214
- article 30, 147, 214, 230
- development, 14
- paradigm shift, 18
- preamble, 9, 16, 18, 92, 120, 155, 200, 209
- preparatory materials. *See* travaux préparatoires
- Convention on the Rights of the Child*, 18
- Council of Europe, 81. *See also* *European Convention on Human Rights*
- criminal law, 22
- CRPD. *See* *Convention on the Rights of Persons with Disabilities*
- D v UK* (1997) 24 EHRR 423, 181–2
- decision-making. *See* case studies; substitute decision-making; supported decision-making
- Declaration on the Rights of Disabled Persons, 15
- Declaration on the Rights of Retarded Persons, 15
- dedifferentiation, 245
- de-institutionalisation, 44, 45, 244
- dementia, 52, 248
- as cognitive disability, 1, 11
- hard cases, 70
- Jess, 6, 198
- substitute decision-making, 21, 121
- dignity
- capabilities approach, 164
- and CRPD, 154, 183
- five-dimensional, 159, 160
- embodied personhood, 174
- equal worth, 160
- indivisibility of human rights, 176
- recognising autonomy, 162
- recognising social nature, 166
- in Judeo-Christian theology, 160
- non-human animals, 166
- and vulnerability, 186
- dignity of risk
- and autonomy, 184
- and best interests, 51
- history of concept, 163
- mental health treatment, 163
- and outcome test, 48
- disability
- different models of, 34–44
- mixed models of, 41
- social model, 11
- Disability Royal Commission, 30, 95, 245
- discrimination. *See also* equality; reasonable accommodation
- direct and indirect, 205
- substitute decision-making as, 63–4
- doctrine of necessity, 221, 223, 234
- economic, social and cultural rights, 25, 28, 76, 89
- differences from civil and political rights, 83–8
- jurisprudence, 176–83

270

equality  
 differential treatment, 207  
 disability-neutral, 221  
 formal, 202  
 inclusive, 211, 227  
 substantive, 204  
 transformative, 211–13

ethic of care, 152, 169–70

*European Convention on Human Rights*, 154.  
 See also economic, social and cultural rights, jurisprudence

facilitated decision-making. See supported decision-making

Feminist theory, 87, 125. See also ethic of care

General Comment No 1. See Committee on the Rights of Persons with Disabilities

*Government of the Republic of SA and Ors v Grootboom and Ors* (2000) 1 SA 46, 179–80

Great Depression, 76

guardianship. See substitute decision-making

hard cases, 2, 3, 56, 70, 73, 165, 174, 175, 192–4, 230–2, 235, 237, 242, 243

*HM v Sweden*, 205–6, 216

*Human Rights Act 1998* (UK), 154. See also economic, social and cultural rights, jurisprudence

Human Rights Committee, 90, 172, 174  
 General Comment No 18, 224–5

human rights model of disability, 43

impairment  
 and disability, 11

individualised funding, 30, 248

institutionalisation. See de-institutionalisation

intellectual disability, 51, 127, 163  
 Alex, 4–5  
 as cognitive disability, 1, 11  
 hard cases, 70  
 Sessa, 5–6  
 substitute decision-making, 21

*International Convention on the Elimination of All Forms of Racial Discrimination*, 17

*International Covenant on Civil and Political Rights*, 14, 75, 91, 103

*International Covenant on Economic, Social and Cultural Rights*, 14, 75, 77, 90, 97, 153  
 Article 2, 84, 85

*International Disability Caucus*, 19, 58–61, 64, 67

justiciability  
 civil and political rights, 144

## Index

economic, social and cultural rights, 87  
 five-dimensional dignity, 189

Kant, Immanuel, 115, 118, 119, 160–2

Law Commission of England and Wales, 14

law reform, 244, 247

lazy state, 188, 189, 247

learned helplessness, 62

least restrictive principle, 57, 117, 188, 247

legal capacity. See also mental capacity  
 capacity to act, 60–1  
 civil death and denial of, 61–2  
 and criminal law, 22  
 definitions, 12  
 functional test, 49  
 outcome test, 47  
 presumption of, 47, 63, 65, 73  
 privileging of, 247  
 status test, 46  
 and substitute decision-making, 59

liberty. See autonomy; Mill, John Stuart

living independently. See right to accommodation or shelter

medical model of disability, 36

mental capacity, 63–4, 70, 118. See also legal capacity

*Mental Capacity Act 2005* (England and Wales), 13, 46, 49, 51, 225

mental illness, 52, 186, 225  
 as cognitive disability, 1, 11  
 scope of coverage, 21  
 social model, 41

Mill, John Stuart, 116, 120

*National Disability Insurance Scheme*, 30, 245

net-widening, 135

Office of the Public Advocate (Qld), 95, 107

*Optional Protocol to the Convention on the Rights of Persons with Disabilities*, 97, 102

*Optional Protocol to the International Covenant on Civil and Political Rights*, 86

*Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, 86, 190

paternalism, 112, 147, 151, 184, 237, 244, 248

personhood. See also autonomy; dignity  
 ableism's denial of, 37  
 authentic self, 122  
 as autonomy, 139

- embodied, 174
- legal capacity, 61, 63
- liberal view, 114
- shared personhood, 124
- Peru, 55
- poverty, 25, 92, 94, 98, 146, 147, 178
- preamble, 158
- Price v UK* (2002) 34 EHRR 53, 175
- principle of the indivisibility of human rights, 9
  - and CRPD, 102
  - definitions and descriptions, 79–83, 88
  - disputed as doctrine, 83–8
  - history, 76
  - importance for disability, 92
  - justiciable versus non-justiciable, 86
  - statements in UN instruments, 77, 96
- principle of the interdependence and indivisibility of human rights. *See* principle of the indivisibility of human rights
- prisoners, 221
- Proclamation of Teheran, 78, 110
- proportionality, 21
- psychotropic medication, 94
- public versus private sphere, 99, 117, 144, 147
- R(ABX and Y) v East Sussex County Council* (No 2) [2003] EWHC 167, 172
- R(Burke) v GMC* [2005] QB 424, 172, 181
- R v Pretty* [2002] 35 EHRR 1, 172, 194
- R v Secretary of State for Social Security, ex parte Council for the Welfare of Immigrants* [1996] 4 All ER, 180–1
- Rawls, John, 34, 115
- reasonable accommodation
  - article 2 CRPD, 202
  - article 5 CRPD, 201
  - different from specific measures, 209
  - General Comment No 6, 208
  - guardianship as, 224, 232
  - HM v Sweden*, 206
  - and the principle of indivisibility, 216
  - and the social model, 38
  - supported decision-making as, 229
- reasonable adjustments. *See* reasonable accommodation
- rehabilitation, 36, 40, 89, 93, 214, 230
- relational autonomy, 125–6, 130, 132–4, 137, 186–7
- Republic of Ireland, 54
- right to accommodation or shelter, 145–7, 177–8, 182, 194, 241
- right to asylum, 178, 180, 182
- right to education, 80, 97, 141, 145, 147, 155, 159, 177, 178, 182, 209, 214, 216
- right to health
  - Alex, 147
  - D v UK* (1997) 24 EHRR 423, 181
  - dignity, 177
  - disability, 94–5
  - socio-economic right, 84
- Roosevelt, Eleanor, 82
- Roosevelt, Franklin D., 76
- Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. *See* Disability Royal Commission
- safeguards, 15, 19, 228
  - article 12(4), 68, 103, 107
  - substitute decision-making, 67
  - supported decision-making, 134
- self-directed support systems. *See* Individualised funding
- sentience, capacity for, 168
- serious adverse effects, 62, 64, 222
- social contract, 35, 115, 117, 127, 132, 166
- social inclusion, 21, 37, 41, 74, 96, 108, 139, 145, 147, 150, 185, 213, 214, 226, 229, 243, 248
- social model of disability, 37
  - challenges of, 39–41
- socio-economic rights. *See* economic, social and cultural rights
- special measures. *See* specific measures
- Special Rapporteur on the Rights of Persons with Disabilities*, 90
- speciesism, 167
- specific measures
  - definition of, 209
  - different from reasonable accommodation, 209
- Standard Rules on the Equalisation of Opportunities for Persons with Disabilities, 16, 200
- stigma and disability
  - dependence, 124, 137
  - inclusive equality, 197, 219
  - internalised self-stigma, 93
  - Jess, 232
  - label of incompetence, 62
  - medical response, 96
  - neglect, 30
  - privileging of autonomy, 20, 136, 138, 240
  - social model, 43
  - special measures, 218
  - welfare, 93

- substitute decision-making
  - abolition of, 59–65
  - best interests, 50–1
  - guardianship, 13, 15, 19, 46, 47, 49, 51, 59–61, 66, 68, 71, 104, 187–8, 222–4, 232, 247, 248
  - last resort, 1, 3, 7, 8, 18, 65–71, 237
  - as safeguard, 68–9
  - substituted judgment, 51–2
  - terminology, 12
- support for decision-making. *See* supported decision-making
- supported decision-making, 13, 52–6
  - best interpretation principle, 63, 69–70
  - cognitive prosthesis, 126
  - facilitated decision-making, 62–3
  - legislation, 53
- Sweden, 54, 248
  
- Texas, 247
- travaux préparatoires, 18, 58, 64, 68
- trust, 125, 127, 128, 131, 136
  
- undue influence, 3, 4, 68, 71, 106, 108, 131, 230
- United Kingdom government, 247
- United Nations Bill of Rights, 75
- United Nations Committee on Economic, Social and Cultural Rights. *See* Committee on Economic, social and Cultural Rights
  
- United Nations Economic and Social Council, 90
- United Nations Human Rights Committee. *See* Human Rights Committee
- United States, 30, 54, 247
- unity resolution, 77
- Universal Declaration of Human Rights, 75–6, 97, 109, 153
  
- Victoria, Australia, 49, 55
- Vienna Convention on the Law of Treaties, 20
- Vienna Declaration, 78, 101, 110, 178
- vulnerability, 222–3
  
- Wackenheim v France*, 172–3
- welfare, 89, 92, 94, 96, 141, 143, 177, 247
- welfare state, 76
- will and preference. *See* autonomy; decision-making, substituted judgment; supported decision-making
- World Health Organisation, 42
- World Network of the Users and Survivors of Psychiatry, 60
- World NGO Summit on Disability. *See* Beijing Declaration
- World Programme of Action Concerning Disabled Persons, 15
- worth, 149, 153–5, 160–1, 169, 178, 192. *See also* dignity