

## **People with Disabilities as a Devalued Group**

**By Antonio Buti\***

It is intolerable that any man, woman, or child go through life segregated and deprived of their rights for any reason, much less because they were born into a body or mind that our global society may deem too different to accommodate. That their separation is due to a physical or mental disability, as opposed to one of the more 'traditional' or visible classifications like race or religion or gender, makes the violation of their rights no less severe. True equality for the disabled means more than access to buildings and methods of transportation. It mandates a change in attitude in the larger social fabric - of which we are all a part - to ensure that they are no longer viewed as problems, but as holders of rights that deserve to be met with the same urgency we afford to our own. Equality puts an end to our tendency to perceive 'flaws' in the individual, and moves our attention to the deficiencies in social and economic mechanisms that do not accommodate differences.<sup>1</sup>

Not so many years ago, I was sitting on a comfortable lounge in the foyer of a major office building in St Georges Terrace waiting for a friend. It was only a few days after a State election. A prominent politician standing nearby was discussing possible ministerial portfolios with his political advisors. Maybe the Premier would give him education, health or mining and resources. He seemed to be happy with any of these areas of responsibility. Then one of his adviser's with a wry grin mentioned the possibility of taken on disability services. The politician seemed to think this was funny and joined in

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\*BPE (Hons), Dip Ed, MIR (W.Aust.); LLB (Hons) (ANU); DPhil (Oxon); Professor, Law School, The University of Western Australia; Barrister and Solicitor of the Supreme Court of Western Australia and the High Court of Australia. I would like to thank Luke Villiers and Eric Fisher for their assistance with the article. All opinions and errors are, of course, my own.

<sup>1</sup> Margaret Robinson, 'Foreword' in Stanley S. Herr, Lawrence O. Gostin and Harold H. Koh (eds), *The Human Rights of Persons with Intellectual Disabilities* (2003) vi.

with his advisors in having a good old laugh at the prospect. Would the Premier really give him—a senior and prominent politician—such a ‘marginal’ and ‘insignificant’ ministerial portfolio as disability services? Surely not!

To the relief of the politician in question and his political advisors, he didn’t get the disability service portfolio. The Premier acknowledged his worth by granting him an ‘important’ economic ministry.

I don’t know what is so funny about being Minister for Disability Services. Probably it is not career advancing or a ministry where one can exercise leadership in cabinet. It rarely rates highly in election manifestos. Recent domestic political discourse is basically silent on the issue, whether at the state or commonwealth level.

The federal health policy debate has centred on major hospital reforms. Mental health has emerged only recently as an element of this debate, and then only after significant prodding. But, what about care for those with disabilities (where there are often significant health issues attached) or for that matter the carers of people with disabilities?

<sup>2</sup> It is good that politicians at both state and federal level are acknowledging the significant challenges of mental health. However, we still wait the day when they acknowledge the need to talk about physical and intellectual disabilities.

The recent South Australian state election has provided a small ray of hope for advocacy of disability rights. For the first time ever in Australia, a candidate from a specific disability rights party has been elected to Parliament. Kelly Vincent, a 21-year-old female,<sup>3</sup> from the Disability Party, was elected<sup>3</sup> to serve an eight-year term in the state’s Upper House. Not only is Vincent the first person in a wheelchair to be elected to the

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<sup>2</sup> Although it should be acknowledged that Bill Shorten, The Parliamentary Secretary for Disabilities, has shown keen interest in introducing a Medicare-style insurance scheme for Australians with serious disabilities.

<sup>3</sup> Who has cerebral palsy and is wheel chair bound.

Parliament of South Australia, she is also the youngest person to be elected to an Upper House of any Parliament in Australia and the youngest female ever elected to an Australian parliament.<sup>4</sup> Of course, one should not pin too much hope on Vincent being able to significantly change the political culture when it comes to matters of disability policy. But, it is a start and every day that Parliament sits, the legislators and policy makers will find it more difficult to ignore the issue of disability rights and disability services.

It is not just the politicians that are missing in action when it comes to disability rights. For example a survey of ‘mainstream’ non-government organisations (NGO) in Europe found that while disability issues were relevant to their overall goals, there was no consistent policy, detailed knowledge or priority and political will on disability issues.<sup>5</sup>

Then we come to my profession – the legal academy – which also has been missing in action on matters of disability discrimination. Survey the leading law journals in Australia and you will find no more than half a dozen articles on this topic. This contrasts starkly with the large number of articles dealing with other human rights issues such as Indigenous rights, gender rights and refugee rights.<sup>6</sup>

There is no one reason why society marginalises people with disabilities. But, we can put forward some contributing factors. At its most basic level, the marginalisation reflects the silence society imposes upon people with disabilities. This is especially the case for people with intellectual disabilities. To an extent, this differential treatment is a product of their physical and intellectual difference from society more broadly. The notion of difference is, however, a matter of construction. A history of intellectual disability is, to a

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<sup>4</sup> Vincent only became the lead candidate for the Disability Party when the original lead candidate died days before the election.

<sup>5</sup> Refer to <<http://www.dodd.nl/default.asp?action=article&id=3284>>.

<sup>6</sup> I have no intention of disparaging these very important human rights areas. In fact, I have published numerous articles in relation to Indigenous rights.

great degree, a history of language, knowledge, and power. It recalls the language used to described, classify, and thus constitute certain members of society as 'disabled'.<sup>7</sup>

An examination of the historical treatment of people with disabilities also demonstrates an extensive degree of vulnerability. Martin Luther, a figure usually associated with free and critical thought, once wrote after encountering a person whom we might now consider had an intellectual disability: 'he did nothing but gorge himself...He ate, deficated [sic], and drooled and, if anyone tackled him, he screamed. If things didn't go well, he wept. So I said to the Prince of Anhalt: "If I were the Prince I should take this child...and drown him."' These views were justified by Luther by saying, 'the Devil sits in such changelings [as the child] where their souls should have been.'<sup>8</sup>

Today, most would reject Luther's views as abhorrent. But not all! Peter Singer, an Australian philosopher and Chair of Bioethics at Princeton University's Centre for Human Values, is renowned for his controversial stance regarding abortion and children with disabilities. Without oversimplifying Singer's arguments, he has publicly advocated for the rights of parents to terminate the life of a severely disabled infant after birth.<sup>9</sup> Moreover, he has also stated that should he parent an infant with down-syndrome, he would adopt the child out.<sup>10</sup> Singer justifies these views by rationalising the essential feature of humanity as being that of self-realisation. This feature, Singer contends, is absent from a newborn infant and more so for those with severe disabilities. Accordingly, Singer argues, 'killing a disabled infant is not morally equivalent to killing a person. Very

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<sup>7</sup> Errol Cocks and Matthew Allen, 'Discourses of Disability', in Errol Cocks, C. Fox, M. Brogan and M. Lee, *Under Blue Skies: The Social Construction of Intellectual Disability in Western Australia* (1996) 282.

<sup>8</sup> Wolf Wolfensberger, *Normalisation: The Principle of Normalisation in Human Services* (1972) 17.

<sup>9</sup> Peter Singer, *Practical Ethics* (2<sup>nd</sup> ed., 1993) 184. Peter Singer has reiterated his views in two public presentations in 1999: Address at Princeton University (Oct 12, 1999), and Address at the 2<sup>nd</sup> Annual Meeting of the American Society for Bioethics and Humanities (Oct 29, 1999).

<sup>10</sup> Interview by Andrew Denton with Peter Singer, 'Enough Rope' ABC TV, 4 October 2004. Transcript access at < <http://www.abc.net.au/tv/enoughrope/transcripts/s1213309.htm>>.

often it is not wrong at all.<sup>11</sup> Singer's views have led some to label him the most dangerous man on the planet.<sup>12</sup> His views have outraged large sections of the community, especially advocates for people with disabilities. However, the outrage at Singer's view has not, been as extreme as one might expect. Indeed, in Australia his lectures continue to be well received and attended. The question is why?

Arguably, the grounds on which both Luther and Singer were able to justify their views stem from the same source. Luther was able to make his pronouncement about the way to deal with the 'changeling' child by appealing to the legitimacy of the religious system that society of the time had empowered. Similarly, with Singer, the legitimacy afforded to his views stem from an underlying acceptance that people would prefer to have a child that is 'healthy'.<sup>13</sup>

In the 21<sup>st</sup> century, society does not judge people with disabilities in the same way as Luther did. Nevertheless, our understanding of humanness, and the essential features of normality, are still matters of social and cultural construction. What we know about people with intellectual and physical disabilities does not come from direct insight into the condition, but by perceptions generated from values learned in a wide social context.<sup>14</sup> For the average, well-meaning 'normal' observer, disability is something that

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<sup>12</sup> Michael Specter, 'The Dangerous Philosopher' *The New Yorker* (6 Sept 1999) citing Diane Coleman, then President of the disability rights group 'Not Yet Dead'. It should be noted that Carl Elliott argues that this comment has been wrongly attributed to Diane Coleman, but was originally made by Carol Cleigh also of 'Not Yet Dead'; Carl Elliott, 'The Organization Men', *Bioethics Forum* (21 April 2006) access at 21/4/2006 at <<http://www.thehastingscenter.org/Bioethicsforum/Post.aspx?id=158>>.

<sup>13</sup> Gerard Goggin and Christopher Newell, *Disability in Australia: Exposing a Social Apartheid* (2005) 31.

<sup>14</sup> Errol Cocks and Matthew Allen, 'Discourses of Disability', in Errol Cocks, C. Fox, M. Brogan and M. Lee, *Under Blue Skies: The Social Construction of Intellectual Disability in Western Australia* (1996) 283-4.

we would rather not have, do anything to avoid, and try to prevent.<sup>15</sup> People with disabilities still suffer powerlessness, because of faulty perceptions of their ability to contribute to, society.<sup>16</sup>

I am not denying that functional impairments limit the opportunities for people with disabilities. However, such limitations are considered and responded to in a powerful social context that, more often than not, has accentuated the impairments of people with disabilities.<sup>17</sup> As Foucault concludes in his study of ‘madness’ through history, deviancy from the norm is not the function of body and minds of people with disabilities but, rather, is written onto their minds and bodies by the society in which they live. For Foucault, discourse has been essential in its description of deviancy in creating knowledge of and words to describe ‘the mad’, and determining who is ‘mad’ and what to do with them.<sup>18</sup> Implicit in Foucault’s work is the assertion that the words used to describe things do not naturally attach to those things. Instead, discourse intervenes, systematically forming the objects of which they speak.<sup>19</sup>

Vic Finkelstein, a British academic with a disability, has highlighted the artificial nature of such constructions. Finkelstein posits an imaginary society where a thousand or so people, all of whom use wheelchairs, settle in a village, and organise a social system to suit them. At some stage, a few able-bodied people come to live in the village, but they do not fit in. They are constantly knocking their heads on door lintels, and require medical intervention. They are given free helmets, and they have difficulty obtaining work because of their variation from the norm: as a result, they become objects of charity.

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<sup>15</sup> Gerard Goggin and Christopher Newell, *Disability in Australia: Exposing a Social Apartheid* (2005) 23.

<sup>16</sup> Adrienne Asch, (2001) 69 ‘Critical Race Theory, Feminism and Disability: Reflections on Social Justice and Personal Identity’ *Ohio State Law Journal* 391; *Americans with Disabilities Act*, 42 U.S.C 1211(a)(7) (1994).

<sup>17</sup> Errol Cocks and Matthew Allen, ‘Discourses of Disability’, in Errol Cocks, C. Fox, M. Brogan and M. Lee, *Under Blue Skies: The Social Construction of Intellectual Disability in Western Australia* (1996) 284.

<sup>18</sup> M. Foucault, *Madness and Civilisation: A History of Insanity in the Age of Reason* (1988).

<sup>19</sup> M. Foucault, *The Archaeology of Knowledge* (1972) 48-9.

In such an imaginary society, Finkelstein argues, it would be possible for the physically impaired to be the able-bodied.<sup>20</sup>

Newell and Goggin argue, it is the discourse of difference, along with the continuing oppression of people with disabilities in Australia, the experience of injustice, exclusion and marginalisation, which constitutes a form of social ‘apartheid’.<sup>21</sup> Commonly, people associate apartheid with the separatist policies of past South African Governments. However, people with disabilities can feel equally separated and excluded without it being state policy. In a wider context, however, ‘Apartheid’ signifies a people set apart: human beings who are regarded as fundamentally other from their fellow human beings.<sup>22</sup> According to Offord: ‘Apartheid is a force to be reckoned with, an insidious ongoing and entrenched repetition of society's design for itself. Disability, like sexuality, is spatially regulated, corralled, set-apart, divorced, cut from and by the dominant cartographers of normal land.’<sup>23</sup>

Discrimination against people with disabilities is thus largely invisible, normalised, and unquestioned. To some extent, these challenges are distinct from those other minorities encounter in law and politics because disability is a social construction defined by statute rather than an immutable characteristic such as race or gender.<sup>24</sup>

In their study of citizenship, Meekosha and Dowse argue that the language and imagery of contemporary citizenship is imbued with hegemonic normalcy and, as such, excludes

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<sup>20</sup> Vic Finkelstein, ‘To deny or not to deny disability’, in A. Brechin, P. Liddiard and J. Swain (eds), *Handicap in a Social World* (1981) 34-46.

<sup>21</sup> Gerard Goggin and Christopher Newell, *Disability in Australia: Exposing a Social Apartheid* (2005) 18.

<sup>22</sup> *Ibid.*, 20.

<sup>23</sup> *Ibid.*

<sup>24</sup> Wendy F. Hensel, ‘The Disability Dilemma: A Skeptical Bench & Bar’ (2008) 69 *University of Pittsburgh Law Review* 637, 638.

people with disabilities.<sup>25</sup> This is equally the case as regards legal discourse. The law essentially reflects society's preparedness to regulate its own actions. Accordingly, the law and for that matter politics, is framed in debates concerning constructed notions of normalcy and dominance to the exclusion of people with disabilities.

A study of the history of disability reveals that the models used to view disability have varied with time. For the most part of history, the medical model has dominated public thinking about impairment and disability.<sup>26</sup> Prior to the Industrial Revolution, medicine was not the self-regulating organised society that exists today. It was only with the revolution and the explosion of the European population that the practise of medicine expanded. Along with this expansion and that of the market economy came the rise of secular rationalism, a shift from supernatural to natural explanations of illness and deviance which guided diagnosis, and treatment, of defects in the human mechanism.<sup>27</sup> The conditions of the revolution were subsequently transplanted into Australia and, by the 1900s, the medical profession had won its battle to monopolise the illness industry.

According to the medical model, internally generated medical conditions adversely affect the personal traits of those who are afflicted.<sup>28</sup> Many of those treating physicians, and untrained psychiatrists, were convinced that 'disabilities' were incurable, and that people with disabilities were dangerous. Because of this belief, the medical profession developed complex aetiological, pathological, and clinical classifications, which blurred moral, medical, and physical judgements.<sup>29</sup> Accordingly, institutional arrangements and social

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<sup>25</sup> Helen Meekosha and Leanne Dowse, (1997) No. 57 'Enabling Citizenship: Gender, disability and citizenship in Australia' *Feminist Review* 49-72.

<sup>26</sup> Laura L. Rovner, 'Disability, Equality, and Identity' (2004) 55 *Alabama Law Review* 1043, 1086-87.

<sup>27</sup> Kylie Carman-Browne and Charlie Fox, 'Doctors, Psychologists and Educators: The Professions and Intellectual Disability', in Errol Cocks, C. Fox, M. Brogan and M. Lee, *Under Blue Skies: The Social Construction of Intellectual Disability in Western Australia* (1996) 206.

<sup>28</sup> Wendy F. Hensel, 'The Disability Dilemma: A Skeptical Bench & Bar' (2008) 69 *University of Pittsburgh Law Review* 637, 641.

<sup>29</sup> A. F. Tredgod, *Mental Deficiency*, (4<sup>th</sup> ed., 1922).

policies were not considered relevant to the individual's experience of impairment. Rather, as the individual's impairment was both personal and biological, there could be no obligation on society to redress any difficulties arising out of disabilities.<sup>30</sup> If an individual could not conform to society's standards, society was justified in excluding them. Of course, those who out of charity or a spirit of benevolence chose to help were free to do so. But, they had no inherent responsibility to act.<sup>31</sup>

It was not until the late 1960s that a new paradigm on disabilities began to emerge. In Australia, psychologists began to take the place of psychiatrists in policies and practices for dealing with disabilities.<sup>32</sup> This shift brought with it a new social model of disabilities, that is, a model which viewed disability, at least in part, as a social construction, influenced and shaped by the physical environments, institutional arrangements, and social policies that form the invisible background of day-to-day life.<sup>33</sup> Under this model the greatest challenge for a person in a wheelchair, for example, may not be the physiological limitations of a wheelchair, but rather an ill-equipped world which would, in essence, write the disability onto the body of the individual. The medical model focuses on the individual. The social model focuses on changing society. It seeks to eradicate discriminatory practices, and to remove physical barriers that preclude people with disabilities from actively participating in the community.<sup>34</sup>

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<sup>30</sup> Wendy F. Hensel, 'The Disability Dilemma: A Skeptical Bench & Bar' (2008) 69 *University of Pittsburgh Law Review* 637, 641.

<sup>31</sup> Mary Crossley, 'The Disability Kaleidoscope' (1999) 74 *Notre Dame Law Review* 621, 652-3.

<sup>32</sup> Although obviously psychiatrists still had primary responsibility for medical diagnosis and prescription of treatment.

<sup>33</sup> Richard K. Scotch, 'Models of Disability and the Americans with Disabilities Act' (2000) 21 *Berkeley Journal of Employment and Labor Law* 213, 214.

<sup>34</sup> Wendy F. Hensel, 'The Disabling Impact of Wrongful Birth and Wrongful Life Actions' (2005) 40 *Harvard Civil Rights-Civil Liberties Law Review* 141, 148.

The medical model has helped create an institutionalised image of disability that is synonymous with functional incompetence because of internal medical limitations. The medical model takes institutional arrangements as the status quo, and sees functioning limitations as being created internally, not externally. It therefore fits more naturally with legal and political conservatism. The social model of disability challenges the assumptions and understandings, which underlie the status quo for people with disabilities. Therefore, it does not fit comfortably with legal and political conservatism.

I have said earlier, the models of disabilities have varied with time. With the introduction of the social model of disabilities, has also come a shift from welfare to rights as part of disability law. Prior to the 1970s, disability law was little more than a sub-category of social welfare law. For Castle, the social welfare state in Australia was largely based on ‘wage security for the worker’ rather than ‘social security for the citizen’.<sup>35</sup> The problem of those ‘who couldn’t work’ was resolved by granting a categorical exemption to the elderly and invalids. Over time, disability became an extension of the invalidity category, with people with disabilities being guaranteed rehabilitation services, cash benefits, and medical care.<sup>36</sup> Dissatisfied with the medical approach to disabilities inherent in the welfare system, activists sought to reconceptualise ideas about disabilities and the proper social response to it.<sup>37</sup> Those seeking reform sought to challenge the notions of paternalism inherent in disability programmes. Vision impaired scholar, Jacobus tenBroek argued: ‘It is the agency of welfare, not the recipient, who decides what life goals are to be followed...In short, the recipient is told *what* he wants as well as how much he is wanting.’<sup>38</sup>

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<sup>35</sup> Fred Castles, ‘Welfare and Equality in Capitalist Societies: How and Why Australia was different’ in R. Kennedy (ed) *Australian Welfare: Historical Sociology* (1989) 69.

<sup>36</sup> Lynne Davis, ‘Rights Replacing Needs: A New Resolution of the Distributive Dilemma for People with Disabilities in Australia?’, in Marge Hauritz, Charles Sampford, and Sophie Blencowe, *Justice for People with Disabilities: Legal and Institutional Issues* (1998) 17.

<sup>37</sup> Samuel R. Bagenstos, ‘Subordination, Stigma, and Disability’ (2000) 86 *Virginia Law Review* 397, 426.

<sup>38</sup> Jacobus tenBroek and Floyd W. Matson, ‘The Disabled and the Law of Welfare’ (1966) 54 *California Law Review* 809, 831.

Part of the challenge to the welfare system was the need to reject the notion that society's 'beneficence' to people with disabilities was, in fact, beneficial. For Bagenstos, the fact that the welfare system treated disability as an excuse for not working was detrimental to the perceived capacity of people with disabilities to engage with broader society. Essential to this challenge was the notion of 'active citizenship'; a reaction to the 'passive citizenship' which, it has been argued, has been created by the welfare state.<sup>39</sup> According to Marshall, active citizenship takes the form of an attack on the 'social rights' of citizenship: the right to live the life of a civilised being according to society's prevailing standards. The welfare state, Marshall argues, promoted passivity among the disadvantaged, which subsequently led to a culture of dependency.<sup>40</sup> While Marshall writes from the 'political right', 'left-wing' thinkers also consider that the welfare state promotes a lack of autonomy thereby facilitating a retreat from citizenship into individual contractual relations.<sup>41</sup> Thus, to be excused from the social obligations of citizenship such as the need to work, was also to be excluded from the social rights of citizenship.<sup>42</sup>

The Commonwealth parliament passed the *Disability Services Act* 1986 (Cth) and the *Disability Discrimination Act* 1992 (Cth), hoping to reorientate attitudes to disability. Importantly, it was expected that these rights mechanisms would increase the access of peoples with disabilities to employment and society more broadly. Unfortunately, it would appear that such expectations have not been met.

A 2003 survey conducted by the Australian Bureau of Statistics (ABS) revealed that only 53 percent of people with disabilities were in the Australian labour force. This compared

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<sup>39</sup> Will Kymlicka and Wayne Normal, 'Return of the Citizen: a Survey of Recent Works on Citizenship Theory' (1994) 104 *Ethics* 352 at 355

<sup>40</sup> T. H. Marshall, *Citizenship and Social Class* (1952).

<sup>41</sup> Lynne Davis, 'Rights Replacing Needs: A New Resolution of the Distributive Dilemma for People with Disabilities in Australia?', in Marge Hauritz, Charles Sampford, and Sophie Blencowe, *Justice for People with Disabilities: Legal and Institutional Issues* (1998) 19.

<sup>42</sup> Samuel R. Bagenstos, 'The Future of Disability Law' (2004) 114 *The Yale Law Journal* 1, 17.

with 81 percent of those without a disability. Of those with a severe core-activity limitation, only 15 percent were in the labour force.<sup>43</sup> Moreover, in 2003-4, the ABS reported that 85.5 percent of Western Australians with disabilities experienced specific limitations or restrictions due to their disability. ‘Specific limitations or restrictions’ referred to limitation in a core activity such as self-care, mobility, and communication, or in schooling or employment.

The Australian survey produced results similar to those in the United States. Moreover, the US study revealed a disturbing and dramatic decline in the employment rate as between people with disabilities vis-à-vis the non-disabled. In 2000, a Harris Survey of working-aged people with disabilities reported that only 32 percent were employed, as compared to 81 percent of working-age people without disabilities.<sup>44</sup>

Despite the shift towards a rights model of disability law, it is clear that people with disabilities still experience deep-rooted structural barriers to obtaining employment including a lack of personal-assistance services, assistive technology, and transportation. As a result, many people with disabilities have been unable to escape the cycle of welfare. These structural barriers facing peoples with disabilities, Bagenstos argues, strongly parallel those faced by people from a lower socio-economic background more generally. Indeed, disability and poverty are closely intertwined: Disability is often a cause of poverty and living in poverty has the capacity to cause or, at least, exacerbate disabling conditions.<sup>45</sup>

I encourage politicians, policy makers, and my colleagues in the legal academy to talk to people with disabilities, and to those who create public policy in the area. I hope that the

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<sup>43</sup> Australian Bureau of Statistics, *Disability, Ageing and Carers: Final Survey Results*, 2003; located at <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4430.0Main+Features12003?OpenDocument>

<sup>44</sup> National Organization on Disability, *2000 N.O.D./Harris Survey of Americans with Disabilities* (2000) 27.

<sup>45</sup> Samuel R. Bagenstos, ‘The Future of Disability Law’ (2004) 114 *The Yale Law Journal* 1, 17.

passing of the *Convention on the Rights of Persons with Disabilities* and the optional protocol by the General Assembly on the 13 December 2006 (U.N. Gen. Res. 61/106) will provoke interest within the Australian body politic and legal academy. The Convention and Optional Protocol entered into force on 3 May 2008, after the Convention received its 20th ratification, and the Optional Protocol 10 ratifications. This marked a major milestone in the effort to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms of persons with disabilities, and to promote respect for their inherent dignity.

I highly recommend to all politicians, policy makers, and legal academics the book *Frontiers of Justice* by US scholar Martha Nussbaum.<sup>46</sup> Nussbaum criticised John Rawls' well-known conception of 'justice as fairness'<sup>47</sup> for its failure to accommodate people with a high degree of physical or mental impairment. Her criticism is two-fold. Firstly, because he invokes the notion of a social contract based on mutual advantage as the basis for his theory, Rawls cannot explain why disabled persons should be accorded justice rather than charity. Secondly, Rawls' theory does not give full citizenship to people with significant mental impairments, as they do not conform to his idealised picture of moral rationality.<sup>48</sup>

Nussbaum instead bases her political doctrine on the concept of 'capabilities' and her focus is on intellectual disabilities. She argues that human beings have a fundamental right to a life of dignity, and that this in turn entitles them to have their capabilities nurtured so that they are capable of living such a life. On her view, social inclusion and care for the disabled are not provided by a society out of charity, but because of its fundamental commitment to justice for all its citizens.<sup>49</sup> This is a noteworthy and positive step in giving disabled people greater prominence in political and legal

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<sup>46</sup> Above n 3.

<sup>47</sup> John Rawls, *A Theory of Justice*, (1971).

<sup>48</sup> Above n 3, 154.

<sup>49</sup> *Ibid.*, 190.

discourse. Also noteworthy, is the book's title: 'Frontiers of Justice'. If, in this context, 'frontier' connotes the limit of knowledge, then our challenge should be to push that frontier back.