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There Must Be Some Way out of Here: Why the Convention on the Rights of Persons with Disabilities Is Potentially the Best Weapon in the Fight against Sanism

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"There Must be Some Way Out of Here": Why the Convention on the Rights of Persons With Disabilities is Potentially the Best Weapon in the Fight Against Sanism

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It is impossible to consider the impact of anti-discrimination law on persons with mental disabilities without a full understanding of how sanism permeates all aspects of the legal system – judicial opinions, legislation, the role of lawyers, juror decision-making – and the entire fabric of society. For those unfamiliar with the term, I define "sanism" as an irrational prejudice of the same quality and character as other irrational prejudices that cause and are reflected in prevailing social attitudes of racism, sexism, homophobia, and ethnic bigotry,[1] that permeates all aspects of mental disability law and affects all participants in the mental disability law system: litigants, fact finders, counsel, and expert and lay witnesses.[2]

Notwithstanding over two decades of anti-discrimination laws[3] and, in many jurisdictions, an impressive corpus of constitutional case law and state statutes,[4] the attitudes of judges, jurors and lawyers often reflect the same level of bigotry that defined this area of law half a century ago.[5] The reasons for this are complex and, to a great extent, flow from centuries of prejudice – often hidden prejudice, often socially acceptable prejudice[6] – that has persisted in spite of prophylactic legislative and judicial reforms, and – at least superficially – an apparent uptick in public awareness. I have railed multiple times about the "irrational," "corrosive", "malignant" and "ravaging" effects of sanism, but its "pernicious power" still poisons all of mental disability law.[7]

The recently-ratified Convention on the Rights of Persons with Disabilities (CRPD) is the most revolutionary international human rights document – ever – that applies to persons with disabilities. The Disability Convention furthers the human rights approach to disability and recognizes the right of people with disabilities to equality in most every aspect of life. It firmly endorses a social model of disability – a clear and direct repudiation of the medical model that traditionally was part-and-parcel of mental disability law. It calls for "respect for inherent dignity" and "non-discrimination." Subsequent articles declare "freedom from torture or cruel, inhuman or degrading treatment or punishment," "freedom from exploitation, violence and abuse," and a right to protection of the "integrity of the person."

In this paper, I consider the impact that the Convention is likely to have on sanism. First, I will briefly discuss both our sanist past and our sanist present. Then, I will consider how the CRPD has the greatest potential for combating sanism, and for changing social attitudes. In this latter inquiry, I will also draw on the tools of therapeutic jurisprudence. Then, I will offer some brief and modest conclusions.

Key words: mental disability law; sanism; international human rights law; therapeutic jurisprudence; Convention on the Rights of Persons with Disabilities

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Introduction

When I started writing about sanism, the potential redemptive influence of international human rights law was only dimly on the horizon. Eric Rosenthal and Leonard Rubenstein had written their groundbreaking piece,[8] *International Human Rights Advocacy Under the "Principles For The Protection Of Persons With Mental Illness*,"[9]> in 1993, but it had been barely mentioned in the law journals.[10] When Rosenthal and Rubenstein first illuminated how the MI Principles[11] came from "an individualistic, libertarian perspective that emphasizes restrictions on what the state can do to a person with mental illness,"[12] they inspired lawyers, advocates, professors and progressive mental health professionals to begin thinking seriously about the intersection between international human rights law and mental disability law. This led me to put on a symposium at New York Law School in 2002 on *International Human Rights Law and the Institutional Treatment of Persons with Mental Disabilities: The Case of Hungary*.[13] This was the first such program ever put on at any US-based law school.[14] In the years following that conference, developments moved on with dizzying rapidity.

Disability rights took center stage at the United Nations, in the most significant historical development in the recognition of the human rights of persons with mental disabilities: the drafting and adoption of a binding international disability rights convention.[15] In late 2001, the United Nations General Assembly established an ad hoc committee "to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities."[16] This committee drafted a document over the course of five years and eight sessions, and the new *Convention on the Rights of Persons with Disabilities* (sometimes "Convention" or "CRPD")[17] was adopted in December 2006 and opened for signature in March 2007.[18] It entered into force – thus becoming legally binding on states parties – on 3 May 2008, 30 days after the 20th ratification.[19] One of the hallmarks of the process that led to the publication of the UN Convention was the participation of persons with disabilities and the clarion cry, "Nothing about us, without us."[20] This has led commentators to conclude that the Convention "is regarded as having finally empowered the 'world's largest minority' to claim their rights, and to participate in international and national affairs on an equal basis with others who have achieved specific treaty recognition and protection."[21]

This Convention is the most revolutionary international human rights document – ever – that applies to persons with disabilities.[22] The Disability Convention furthers the human rights approach to disability and recognizes the right of people with disabilities to equality in almost every aspect of life.[23] It firmly endorses a social model of disability – a clear and direct repudiation of the medical model that traditionally was part and parcel of mental disability law.[24] It furthers the human rights approach to disability and recognizes the right of people with disabilities to equality in most aspects of life: "The Convention responds to traditional models and situates disability within a social model framework[25] and sketches the full range of human rights that apply to all human beings, all with a particular application to the lives of persons with disabilities."[26] It provides a framework for insuring that mental health laws "fully recognize the rights of those with mental illness."[27]

The CRPD categorically affirms the social model of disability[28] by describing it as a condition arising from "interaction with various barriers [that] may hinder their full and effective participation in society on an equal basis with others" instead of inherent limitations,[29] reconceptualizes mental health rights as disability rights,[30] and extends existing human rights to take into account the specific rights experiences of persons with disabilities.[31] To this end, it calls for "respect for inherent dignity"[32] and "non-discrimination."[33] Subsequent articles declare

"freedom from torture or cruel, inhuman or degrading treatment or punishment,"[34] "freedom from exploitation, violence and abuse,"[35] and a right to protection of the "integrity of the person."[36]

My hopes are, of course, that the CRPD serves as a vehicle that will finally extinguish the toxic stench of sanism that permeates all levels of society. In this paper, I will consider whether the Convention – ratified or not – is likely to do that. First, I will briefly discuss both our sanist past and our sanist present. Then, I will consider how the CRPD has the greatest potential for combating sanism, and for changing social attitudes. In this latter inquiry, I will also draw on the tools of therapeutic jurisprudence.[37] Then, I will offer some brief and modest conclusions.

The title of my paper begins with the first line of Bob Dylan's brilliant and iconic song, *All Along the Watchtower*,[38] a song that captures the "fragility of the human condition"[39] and reflects "the storm of history."[40] Globally, our treatment of persons with mental disabilities has spoken to the way we have ignored (and exacerbated) that "fragility"; the ratification of the United Nations Convention is part of a major new "storm of history." As Dylan reminds us later in the same song, "the hour is getting late."[41]

Our Sanist Past[42]

Judges are not immune from sanism. "[E]mbedded in the cultural presuppositions that engulf us all,"[43] judges take deeper refuge in heuristic thinking and flawed, non-reflective "ordinary common sense," both of which continue the myths and stereotypes of sanism.[44] They reflect and project the conventional morality of the community, and judicial decisions in all areas of civil and criminal mental disability law continue to reflect and perpetuate sanist stereotypes.[45] Their language too often demonstrates bias against mentally disabled individuals[46] and contempt for the mental health professions.[47] Courts often appear impatient with mentally disabled litigants, ascribing their problems in the legal process to weak character or poor resolve. Thus, a popular sanist myth is that "[m]entally disabled individuals simply don't try hard enough. They give in too easily to their basest instincts, and do not exercise appropriate self-restraint."[48] We assume that "[m]entally ill individuals are presumptively incompetent to participate in 'normal' activities [and] to make autonomous decisions about their lives (especially in the area of medical care)."[49]

At its base, sanism is irrational. Any investigation of the roots or sources of mental disability jurisprudence must factor in society's irrational mechanisms that govern our dealings with mentally disabled individuals.[50] The entire legal system makes assumptions about persons with mental disabilities – who they are, how they got that way, what makes them different, what there is about them that lets us treat them differently, and whether their conditions are immutable.[51] These assumptions reflect our fears and apprehensions about mental disability, persons with mental disability, and the possibility that we may become mentally disabled.[52] The most important question of all – *Why do we feel the way we do about these people?* – is rarely asked.[53]

I believe that sanism – along with pretextuality[54] – has controlled, and continues to control, modern mental disability law. Just as importantly (perhaps more importantly), they continue to exert this control invisibly. This invisibility means that the most important aspects of mental disability law – not just the law "on the books," but, more importantly, the law in action and practice – remains hidden from the public discussions about mental disability law.[55]

Our Sanist Present[56]

Although we are more aware now of the impact of sanism than we were 20 years ago when I began to write about it, it is not at all clear that the legal system has made the sort of structural changes needed to combat

sanism's power. I will consider here just one example: the adequacy of counsel in involuntary civil commitment cases.[57] I am drawing on an American case, not because of any sense of American exceptionalism, but because I think it is the best example in all the case law from all the law with which I am familiar.

The Montana case of *In re K.G.F.*[58] is, "without doubt, the most comprehensive decision on the scope and meaning of the right to counsel in this context from any jurisdiction in the world."[59] K.G.F. was a voluntary patient at a community hospital in Montana whose expressed desire to leave the facility prompted a state petition alleging her need for commitment. Counsel was appointed, and a commitment hearing was scheduled for the next day. The state's expert recommended commitment; patient's counsel presented the testimony of the plaintiff herself and a mental health professional, who recommended that the patient be kept in the hospital a few days so that a community-based treatment plan could be arranged nearer to her home. The court ordered commitment. K.G.F.'s appeal was premised, in part, on allegations of ineffective assistance of counsel.[60]

In a thoughtful and scholarly opinion, the Montana Supreme Court relied on state statutory and constitutional sources to find that "the right to counsel . . . provides an individual subject to an involuntary commitment proceeding the right to effective assistance of counsel. In turn, this right affords the individual with the right to raise the allegation of ineffective assistance of counsel in challenging a commitment order."[61] In assessing what constitutes "effectiveness," the court – startlingly, to my mind – eschewed the *Strickland v. Washington* standard[62] (used to assess effectiveness in criminal cases) as insufficiently protective of the "liberty interests of individuals such as K.G.F. who may or may not have broken any law, but who, upon the expiration of a 90-day commitment, must indefinitely bear the badge of inferiority of a once 'involuntarily committed' person with a proven mental disorder."[63] Interestingly, one of the key reasons why *Strickland* was seen as lacking was the court's conclusion that "reasonable professional assistance"[64] – the lynchpin of the *Strickland* decision – "cannot be presumed in a proceeding that routinely accepts – and even requires – an unreasonably low standard of legal assistance and generally disdains zealous, adversarial confrontation."[65]

In assessing the contours of effective assistance of counsel, the court emphasized that it was not limiting its inquiry to courtroom performance; even more important was counsel's "failure to fully investigate and comprehend a patient's circumstances prior to an involuntary civil commitment hearing or trial, which may, in turn, lead to critical decision-making between counsel and client as to how best to proceed." Such pre-hearing matters, the court continued, "clearly involve effective preparation prior to a hearing or trial." The court further emphasized the role of state laws guaranteeing the patient's "dignity and personal integrity" and "privacy and dignity" in its decision: "'[q]uality counsel provides the most likely way – perhaps the only likely way' to ensure the due process protection of dignity and privacy interests in cases such as the one at bar."[66]

After similarly elaborating on counsel's role in the client interview and the need to ensure that the patient understands the scope of the right to remain silent, the court concluded by underscoring counsel's responsibilities "as an advocate and adversary."[67] The lawyer must "represent the perspective of the [patient] and . . . serve as a vigorous advocate for the [patient's] wishes," engaging in "all aspects of advocacy and vigorously argu [ing] to the best of his or her ability for the ends desired by the client," and operating on the "presumption that a client wishes to not be involuntarily committed." Thus, "evidence that counsel independently advocated or otherwise acquiesced to an involuntary commitment – in the absence of any evidence of a voluntary and knowing consent by the patient-respondent – will establish the presumption

that counsel was ineffective."[68] In conclusion, the court stated:

> [I]t is not only counsel for the patient-respondent, but also courts, that are charged with the duty of safeguarding the due process rights of individuals involved at every stage of the proceedings, and must therefore rigorously adhere to the standards expressed herein, as well as those mandated under [state statute].[69]

On one hand, *K.G.F.* provides an "easily transferable blueprint for courts that want to grapple with adequacy of counsel issues";[70] on the other, no other state court has adopted its reasoning in the decade since it was decided. In fact, its rationale was specifically rejected by the Washington Supreme Court in an opinion that concluded, with no supporting empirical or other statistical evidence:

> We do not share the Montana Supreme Court's dim view of the quality of civil commitment proceedings, or their adversarial nature, in the state of Washington. The Strickland standard appears to be sufficient to protect the right to the effective assistance of counsel for a civil commitment respondent in this state.[71]

Writing about this issue in a domestic context, I have noted:

> [G]lobally, counsel's continuing failure here still appears to be inevitable, given the bar's abject disregard of both consumer groups (made up predominantly of former recipients, both voluntary and involuntary, of mental disability services) and individuals with mental disabilities, many of whom have written carefully, thoughtfully, and sensitively about these issues.[72]

In short, sanism is *not* an issue that has gone away. Although, as I have noted already, it is recognized more and more by scholars,[73] it still remains "under the radar," at least for most courts in the United States.

The CRPD

The CRPD in General[74]

The CRPD is unique because it is the first legally binding instrument devoted to the comprehensive protection of the rights of persons with disabilities. It not only clarifies that states should not discriminate against persons with disabilities, but also sets out explicitly the many steps that states must take to create an enabling environment so that persons with disabilities can enjoy authentic equality in society. One of the most critical issues in seeking to bring life to international human rights law in a mental disability law context is the right to adequate and dedicated counsel. The CRPD mandates that "States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity".[75] Elsewhere, the convention commands:

> States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.[76]

"The extent to which this Article is honoured in signatory nations will have a major impact on the extent to which this entire Convention affects persons with mental disabilities."[77] If and only if, there is a mechanism for the appointment of dedicated counsel,[78] can this dream become a reality.

The ratification of the CRPD is the most important development – ever – in institutional human rights law for persons with mental disabilities. The CRPD is detailed, comprehensive, integrated and the result of a careful drafting process. It seeks to reverse the results of centuries of oppressive behavior and attitudes that have stigmatized persons with disabilities. Its goal is clear: to promote,

protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms of all persons with disabilities, and to promote respect for their inherent dignity.[79] Whether this will actually happen in practice is still far from a settled matter.[80]

Issues of Dignity[81]

When the United Nations embarked upon the drafting process of the CRPD, it established an ad hoc committee "to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities."[82] This was consonant with the perspectives of observers such as Professor Aaron Dhir: "Degrading living conditions, coerced 'treatment,' scientific experimentation, seclusion, restraints – the list of violations to the dignity and autonomy of those diagnosed with mental disabilities is both long and egregious."[83]

As ratified, the Convention calls for "respect for inherent dignity."[84] It requires states parties "to adopt immediate, effective and appropriate measures. . . [t]o raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities."[85] The Preamble characterizes "discrimination against any person on the basis of disability [as] a violation of the inherent dignity and worth of the human person."[86] And these provisions are consistent with the entire Convention's "rights-based approach focusing on individual dignity,"[87] placing the responsibility on the state "to tackle socially created obstacles in order to ensure full respect for the dignity and equal rights of all persons."[88] Prof. Michael Stein puts it well: A "dignitary perspective compels societies to acknowledge that persons with disabilities are valuable because of their inherent human worth."[89] In Prof. Cees Maris's summary: "The Convention's object is to ensure disabled persons enjoy all human rights with dignity"[90]

In his testimony in support of the UN Convention, Eric Rosenthal, the director of Mental Disability Rights International, shared with Congress his observations of the treatment of institutionalized persons with mental disabilities in Central and Eastern European nations: "[w]hen governments deny their citizens basic human dignity and autonomy, when they subject them to extremes of suffering, when they segregate them from society – we call these violations of fundamental human rights."[91]

Dignity issues self-evidently affect institutionalization issues as well.[92] An intermediate appellate court United States case – in holding that a state welfare department regulation requiring certain patients to receive services in the segregated setting of a nursing home, rather than in their own homes, violated the Americans with Disabilities Act (ADA) – has read the ADA to intend to ensure that "qualified individuals receive services in a manner consistent with basic human dignity rather than a manner which shunts them aside, hides, and ignores them."[93] Courts in Canada have similarly stressed the role of dignitarian values in cases involving the autonomy of persons with mental disabilities: "Mentally ill persons are not to be stigmatized because of the nature of their illness or disability; nor should they be treated as persons of lesser status or dignity. Their right to personal autonomy and self-determination is no less significant, and is entitled to no less protection."[94]

Again, the extent to which the ratification of the CRPD actually affects our sorry history of stigmatization and marginalization will, in many ways, be the bellwether of the Convention's actual success.

Therapeutic Jurisprudence[95]

One of the most important legal theoretical developments of the past two decades has been the creation and dynamic growth of therapeutic jurisprudence (TJ).[96] Initially employed in cases involving individuals with

mental disabilities, but subsequently expanded far beyond that narrow area, therapeutic jurisprudence presents a new model for assessing the impact of case law and legislation, recognizing that, as a therapeutic agent, the law that can have therapeutic or anti-therapeutic consequences.[97] The ultimate aim of therapeutic jurisprudence is to determine whether legal rules, procedures, and lawyer roles can or should be reshaped to enhance their therapeutic potential while not subordinating due process principles.[98]

Therapeutic jurisprudence "asks us to look at law as it actually impacts people's lives"[99] and focuses on the law's influence on emotional life and psychological well-being.[100] It suggests that "law should value psychological health, should strive to avoid imposing anti-therapeutic consequences whenever possible, and when consistent with other values served by law should attempt to bring about healing and wellness."[101] By way of example, therapeutic jurisprudence "aims to offer social science evidence that limits the use of the incompetency label by narrowly defining its use and minimizing its psychological and social disadvantage."[102] In recent years, scholars have considered a vast range of topics through a TJ lens – including, but not limited to, all aspects of mental disability law, domestic relations law, criminal law and procedure, employment law, gay rights law, and tort law.[103] As Ian Freckelton has noted, "it is a tool for gaining a new and distinctive perspective utilizing socio-psychological insights into the law and its applications."[104] TJ is also part of a growing comprehensive movement in the law towards establishing more humane and psychologically optimal ways of handling legal issues collaboratively, creatively, and respectfully.[105] These alternative approaches optimize the psychological well-being of individuals, relationships, and communities dealing with a legal matter, and acknowledge concerns beyond strict legal rights, duties, and obligations. In its aim to use the law to empower individuals, enhance rights, and promote well-being, therapeutic jurisprudence has been described as "a sea-change in ethical thinking about the role of law. . . a movement towards a more distinctly relational approach to the practice of law. . . which emphasises psychological wellness over adversarial triumphalism."[106] That is, TJ supports an ethic of care.[107]

One of the central principles of therapeutic jurisprudence is a commitment to dignity. Professor Amy Ronner describes the "three Vs" (voice, validation and voluntariness),[108] arguing:

> What "the three Vs" commend is pretty basic: litigants must have a sense of voice or a chance to tell their story to a decision maker. If that litigant feels that the tribunal has genuinely listened to, heard, and taken seriously the litigant's story, the litigant feels a sense of validation. When litigants emerge from a legal proceeding with a sense of voice and validation, they are more at peace with the outcome. Voice and validation create a sense of voluntary participation, one in which the litigant experiences the proceeding as less coercive. Specifically, the feeling on the part of litigants that they voluntarily partook in the very process that engendered the end result or the very judicial pronunciation that affects their own lives can initiate healing and bring about improved behavior in the future. In general, human beings prosper when they feel that they are making, or at least participating in, their own decisions.[109]

I believe that TJ has the best capacity to rid the law of sanism and pretextuality. Elsewhere, in a book-length treatment of the insanity defense, I have written:

> [W]e must rigorously apply therapeutic jurisprudence principles to each aspect of the insanity defense. We need to take what we learn from therapeutic jurisprudence to strip away sanist behavior, pretextual reasoning and teleological decision making from the insanity defense process. This would enable us to confront the pretextual use of social science data in an open and meaningful way.[110]

I believe that the same principles also apply to the subject-matter of this paper. Janet Lord and her colleagues focus on the significance of "voice accountability" in the drafting of the CRPD.[111] The application of TJ enhances the likelihood that the "silenced" voices will be heard.[112]

Conclusion

The CRPD, at base, is a document that seeks to eradicate and eviscerate "stigmas and stereotypes,"[113] and that emphasizes and upholds the "social inclusion [and] anti-stigma agenda."[114] It reflects the view of Canadian human rights activists that "only positive state action can combat the deeply entrenched patterns of disability disadvantage arising from stigma, devaluation, stereotyping and exclusion."[115] Its purpose is to "combat combat stereotypes, prejudices and harmful practices relating to persons with disabilities."[116]

It is also a document that demands law reform at the local and national level all over the world,[117] whether in the United States or on the tiny island nation of Vanuatu.[118] Although much of its framework was inspired by the principles and concepts in the ADA,[119] the CRPD goes far beyond the ADA in its positive mandates, its focus on stigma and prejudice, its uncompromising adoption of the social model, its reporting requirements, and its identification of the specific steps that states must take to ensure an environment for the enjoyment of human rights (awareness raising, ensuring accessibility, ensuring protection and safety in situations of risk and humanitarian emergencies, promoting access to justice, ensuring personal mobility, enabling habilitation and rehabilitation, and collecting statistics and data).[120] It also – perhaps most importantly – makes visible what has long been "invisible to the world's political, social and economic process."[121]

Mary Donnelly was precisely accurate when she argued that "the goal of [mental disability] law reform must include delivery on the right… to dignity."[122] I believe that the CRPD has the capacity to do this, but only if signatory nations grasp the extent to which sanism has pervaded all mental disability law policy and enforcement over the centuries. This is an important challenge for jurisdictions such as Victoria in Australia, which are currently embarked upon reform of their mental health legislation. I believe that the application of TJ principles will, finally, allow us to see this and to, I hope, make this truly the "dawn of a new era."[123]

All Along the Watchtower (to end by returning to my title) is the most played of Dylan's songs.[124] One popular analysis suggests it reflects what he sees as a "loss of humanity" and Dylan's resentment at "society's arrogance."[125] We have, since time immemorial, through the device of sanism treated persons with mental disabilities – especially those institutionalized" with "arrogance" in way that reveals a "loss of humanity." Perhaps, the CRPD will finally, and redemptively, offer us "a way out of here."

Acknowledgement

The author thanks Bernadette McSherry for inspiring the paper's title.

Notes

1 The word "sanism" was, to the best of my knowledge, coined by Dr. Morton Birnbaum. See Morton Birnbaum, "The Right to Treatment: Some Comments on Its Development" in Frank Ayd (ed), *Medical, Moral and Legal Issues in Health Care* (Williams & Wilkins, 1974) 97, 105; see also *Koe v. Califano* F.2d 761, 764 n. 12 (2d Cir. 1978). I have relied on the term constantly for the past 20 years to explain the roots of our attitudes towards persons with mental disabilities. See for example Michael L. Perlin, *Half-Wracked Prejudice Leaped Forth: Sanism, Pretextuality, and Why and How Mental Disability Law Developed As It Did* (1999) 10 J. Contemp. Leg. Iss. 3; Michael L. Perlin, "On Sanism" (1992) 46 SMU L. Rev. 373.

2 On the way that sanism affects lawyers' representation of clients, see Michael L.

Perlin, "You Have Discussed Lepers and Crooks: Sanism in Clinical Teaching" (2003) 9 Clin. L. Rev. 683, 689–90.

3 42 USC §§ 12101 et seq.

4 See Michael L. Perlin, "They Keep It All Hid: The Ghettoization of Mental Disability Law and Its Implications for Legal Education" (2010) 54 St. Louis U. L. J. 857, 857–58 n. 1 (listing cases).

5 See generally, Michael L. Perlin, "Lepers and Crooks."

6 See generally, Michael L. Perlin, *The Hidden Prejudice: Mental Disability on Trial* (American Psychological Association, 2000).

7 See for example, Michael L. Perlin, "'And My Best Friend, My Doctor, Won't Even Say What It Is I've Got': The Role and Significance of Counsel in Right to Refuse Treatment Cases" (2005) 42 San Diego L. Rev. 735, 750 ("irrational"); Michael L. Perlin, "Life Is In Mirrors, Death Disappears: Giving Life to *Atkins*" (2003) 33 N. Mex. L. Rev. 315, 346 ("ravaging"); Michael L. Perlin, "She Breaks Just Like a Little Girl: Neonaticide, The Insanity Defense, and the Irrelevance of Ordinary Common Sense" (2003) 10 Wm. & Mary J. Women & L. 1, 25 ("malignant and corrosive"); Michael L. Perlin, "Everybody Is Making Love/Or Else Expecting Rain: Considering the Sexual Autonomy Rights of Persons Institutionalized Because of Mental Disability in Forensic Hospitals and in Asia" (2008) 83 U. Wash. L. Rev. 481, 502 ("corrosive"); Michael L. Perlin, "Things Have Changed: Looking at Non-institutional Mental Disability Law Through the Sanism Filter" (2002–03) 46 N.Y.L. Sch. L. Rev. 535, 541 ("pernicious power").

8 Michael L. Perlin, *International Human Rights and Mental Disability Law: When the Silenced Are Heard* (Oxford University Press, 2011), 11–12.

9 (1993) 16 Int'l J. L. & Psychiatry 257.

10 A WESTLAW search reveals only eight citations prior to 2002.

11 The Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care are widely referred to as the "MI Principles." G.A. Res. 119, U.N. GAOR, 46th Sess., Supp. No. 49, Annex at 189, U.N. Doc. A/46/49 (1991).

12 Rosenthal and Rubenstein, (1993) 16 Int'l J. L. & Psychiatry 257, at 260. On the way that the MI Principles became the "centerpiece of the human rights based approach to mental health care" in Australia, see Neil Rees, "International Human Rights Obligations and Mental Health Tribunals" (2003) 10 Psychiatry, Psychol. & L. 33; see also Terry Carney, "Mental Health in Postmodern Society: Time for New Paradigms?" (2003) 10 Psychiatry, Psychol. & L. 12. But see Tina Minkowitz, "The United Nations Convention on the Rights of Persons with Disabilities and the Right to be Free from Nonconsensual Psychiatric Interventions" (2007) 34 Syracuse J. Int'l L. & Com. 405, 407 (criticizing MI Principles for not being sufficiently protective of the rights of persons with psychosocial disabilities, especially in the context of the right to refuse treatment); T.W. Harding, "Human Rights Law in the Field of Mental Health: A Critical Review" (2000) 101 Acta Psychiatrica Scandinavica 24, 24 (discussing how MI Principles are "basically flawed"; also specifically referring to the right to refuse treatment). Criticisms of the MI Principles are discussed in H. Archibald Kaiser, "Canadian Mental Health Law: The Slow Process of Redirecting the Ship of State" (2009) 17 Health L.J. 139, 160.

13 (2002) 21 N.Y.L. Sch. J. Int'l & Comp. L. 340. Presenters at this conference included Rosenthal, Krassimir Kanev, a human rights advocate with the Bulgaria Helsinki Committee, Gabor Gombos, head of the most important psychiatric survivor organization in Hungary, and Eva Szeli, then Director of European Operations at MDRI's Budapest office. See *ibid.,* 346–8.

14 Major articles based on conference presentations include Eric Rosenthal & Clarence J. Sundram, "International Human Rights in Mental Health Legislation" (2002) 21 N.Y. L. Sch. J. Int'l & Comp. L. 469, and Bruce J. Winick, "Therapeutic Jurisprudence and the Treatment of People with Mental Illness in Eastern Europe: Construing International Human Rights Law" (2002) 21 N.Y.L. Sch. J. Int'l & Comp. L. 537.

15 On the singular role of this Convention, see for example Frederic Megret, *The Disabilities Convention: Toward a Holistic Concept of Rights*, available at http://ssrn.co/abstract=1267726; and Frederic Megret, "The Disabilities Convention: Human Rights of Persons with Disabilities or Disability Rights?" (2008) 30 Hum. Rights 494; Michael L. Perlin and Eva Szeli, "Mental Health Law and Human Rights: Evolution and Contemporary Challenges" in Michael Dudley et al (eds), *Mental Health and*

Human Rights : Vision, Praxis, and Courage (Oxford University Press, 2012), 98; Michael L. Perlin and Eva Szeli, "Mental Health Law and Human Rights: Evolution, Challenges and the Promise of the New Convention" in Jukka Kumpuvuori and Martin Scheninen (eds), *United Nations Convention on the Rights of Persons with Disabilities: Multidisciplinary Perspectives* (Center for Human Rights of Persons with Disabilities in Finland (VIKE), 2010), 241.

16 (2001) A. Res. 56/168.

17 (2006) G.A. Res. A/61/611.

18 (2006) G.A. Res. A/61/106.

19 On the 20th ratification, see http://www.un.org/News/Press/docs/2008/hr4941.doc.htm. See generally, Tara Melish, "The UN Disability Convention: Historic Process, Strong Prospects, and Why the U.S. Should Ratify" (Winter 2007) 14 Hum. Rts. Brief 37, 44; Michael Ashley Stein and Penelope J.S. Stein, "Beyond Disability Civil Rights" (2007) 58 Hastings L. J. 1203.

20 See for example Rosemary Kayess and Phillip French, "Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities" (2008) 8 Hum. Rts. L. Rev. 1, 4 n. 15; also the statement by Hon. Ruth Dyson, Minister for Disability Issues, New Zealand Mission to the UN, for the formal ceremony at the signing of the CRPD, 30 March 2007: "Just as the Convention itself is the product of a remarkable partnership between governments and civil society, effective implementation will require a continuation of that partnership." The negotiating slogan "Nothing about us without us" was adopted by the International Disability Caucus, available at: http://www.un.org/esa/socdev/enable/documents/Stat_Conv/nzam.doc.

21 *Ibid.*, n. 17 (See, for example, statements made by the High Commissioner for Human Rights, Louise Arbour, and the Permanent Representative of New Zealand and Chair of the Ad-Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, Ambassador Don Mackay, at a Special Event on the Convention on Rights of Persons with Disabilities, convened by the UN Human Rights Council, 26 March 2007, available at: http://www.unog.ch/80256EDD006B9 C2E/ (http NewsByYear_en)/7444B2E219117CE8C 12572AA004C5701?Open Document.)

22 Perlin and Szeli, "Evolution and Contemporary Challenges"; Perlin, "Silenced Are Heard" n. 8, 3–20; Michael L. Perlin, "'A Change Is Gonna Come': The Implications of the United Nations Convention on the Rights of Persons with Disabilities for the Domestic Practice of Constitutional Mental Disability Law" (2009) 29 No. Ill. U. L. Rev. 483.

23 See for example Aaron Dhir, "Human Rights Treaty Drafting Through the Lens of Mental Disability: The Proposed International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities" (2005) 41 Stan. J. Int'l L. 181.

24 See generally, Michael L. Perlin, "'Abandoned Love': The Impact Of Wyatt v. Stickney On The Intersection Between International Human Rights And Domestic Mental Disability Law" (2011) 35 Law & Psychol. Rev. 121.

25 See for example Janet E. Lord, David Suozzi and Allyn L. Taylor, "Lessons From The Experience Of UN Convention On The Rights Of Persons With Disabilities: Addressing The Democratic Deficit in Global Health Governance" (2010) 38 J.L. Med. & Ethics 564; Kaiser, *Canadian Mental Health Law*.

26 Janet E. Lord & Michael A. Stein, "Social Rights And The Relational Value Of The Rights To Participate In Sport, Recreation, And Play" (2009) 27 B.U. Int'l L. J. 249, 256; see also Ronald McCallum, *The United Nations Convention on the Rights of Persons with Disabilities: Some Reflections* (2010), http://ssrn.com/abstract=1563883.

27 Bernadette McSherry, "International Trends In Mental Health Laws: Introduction" (2008) 26 Law in Context 1, 8.

28 See Lord et al, "Global Health Governance" 568.

29 CRPD, art. 1 and preamble para. e.

30 Phillip Fennel, "Human Rights, Bioethics, and Mental Disorder" (2008) 27 Med. & L. 95.

31 Megret, "Disability Rights"; see Perlin, *supra*, note 8, at 143–58.

32 CRPD, Article 3(a).

33 *Ibid.*, Article 3(b).

34 *Ibid.,* Article 15.

35 *Ibid.*, Article 16.

36 *Ibid.*, Article 17.

37 Therapeutic jurisprudence presents a new model by which we can assess the ultimate impact of case law and legislation on mentally disabled individuals. It requires (1) studying the role of the law as a therapeutic

agent; (2) recognizing that substantive rules, legal procedures, and lawyers' roles may have either therapeutic or anti-therapeutic consequences; and (3) questioning whether such rules, procedures, and roles can or should be reshaped so as to enhance their therapeutic potential, while not subordinating due-process principles. See Perlin, *She Breaks*, 30–31, n. 233.

38 http://www.bobdylan.com/songs/all-along-the-watchtower.

39 Oliver Trager, *Keys to the Rain: The Definitive Bob Dylan Encyclopedia* 9 (Billboard Books, 2004).

40 Mike Marqusee, *Chimes of Freedom: The Politics of Bob Dylan's Art* 238 (The New Press, 2003).

41 See http://www.bobdylan.com/songs/all-along-the-watchtower.

42 This section was adapted from Perlin, "Half-Wracked Prejudice"14–19.

43 Anthony D'Amato, "Harmful Speech and the Culture of Indeterminacy" (1991) 32 Wm. & Mary L. Rev. 329, 332.

44 Michael L. Perlin, "Psychodynamics and the Insanity Defense: 'Ordinary Common Sense' and Heuristic Reasoning" (1990) 69 Neb. L. Rev. 3; Michael L. Perlin, "Unpacking the Myths: The Symbolism Mythology of Insanity Defense Jurisprudence" (1989–90) 40 Case W. Res. L. Rev. 599, 618–30.

45 Perlin, *Sanism*, 400–04.

46 See *Corn v. Zant* 708 F.2d 549, 569 (11th Cir. 1983), reh'g. denied; (1983) 714 F.2d 159 (11th Cir.), cert. denied; (1984) 467 U.S. 1220 (defendant referred to as a "lunatic"); *Sinclair v. Wainwright* (1987) 814 F.2d 1516, 1522 (11th Cir.) (quoting *Shuler v. Wainwright* 491 F.2d 1213, 1223 (5th Cir. 1974)) (using "lunatic"); *Brown v. People* (1956) Ill. 134 N.E.2d 760, 762 (judge asked defendant, "You are not crazy at this time, are you?"); *Pyle v. Boles* (1966) N.D. W. Va. 250 F. Supp. 285, 289 n. 3 (trial judge accused *habeas* petitioner of "being crazy"). But cf. *State v. Penner* (1989) Kan. 772 P.2d 819 (unpublished disposition), at *3 (witnesses admonished not to refer to defendant as "crazy" or "nuts").

47 See *Commonwealth v. Musolino* (1983) Pa. Super. Ct. 467 A.2d 605, 614 (reversible error for trial judge to refer to expert witnesses as "headshrinkers"). Compare *State v. Percy* (1986) Vt. 507 A.2d 955, 957 n. 1, appeal after remand; (1990) Vt. 595 A.2d 248, cert. denied; (1991) 502 U.S. 927 (reversing a conviction where prosecutor, in closing argument, referred to expert testimony as "psycho-babble"); with *Commonwealth v. Cosme* (1991) Mass. 575 N.E.2d 726, 731 (not error where prosecutor referred to defendant's expert witnesses as "a little head specialist" and a "wizard"). See generally Douglas Mossman and Marshall Kapp, "'Courtroom Whores" ? – or Why Do Attorneys Call Us? Findings from a Survey on Attorneys' Use of Mental Health Experts" (1998) 26 J. Am. Acad. Psychiatry & L. 27.

48 Perlin, *Sanism*, 396; see for example J.M. Balkin, "The Rhetoric of Responsibility" (1990) 76 Va. L. Rev. 197, 238 (Hinckley prosecutor suggested to jurors, "if Hinckley had emotional problems, they were largely his own fault"); see also *State v. Duckworth* (1986) La. App. 496 So. 2d 624, 635 (juror who felt defendant would be responsible for actions as long as he "wanted to do them" not excused for cause) (no error).

49 Perlin, "Sanism," 394.

50 See generally Perlin, "Myths," n. 44.

51 See generally Martha Minow, *Making All the Difference: Inclusion, Exclusion, and American Law* (Cornell University Press, 1990); Sander Gilman, *Difference and Pathology: Stereotypes of Sexuality, Race, and Madness* (Cornell University Press, 1985).

52 See for example Joseph Goldstein and Jay Katz, "Abolish the 'Insanity Defense' – Why Not?" (1963) 72 Yale L.J. 853, 868–69; Michael L. Perlin, "Competency, Deinstitutionalization, and Homelessness: A Story of Marginalization" (1991) 28 Hous. L. Rev. 63, 108 (on society's fears of mentally disabled persons), and *ibid*. at 93 n.174 ("[W]hile race and sex are immutable, we all can become mentally ill, homeless, or both. Perhaps this illuminates the level of virulence we experience here"). On the way that public fears about the purported link between mental illness and dangerousness "drive the formal laws and policies" governing mental disability jurisprudence, see John Monahan, "Mental Disorder and Violent Behavior: Perceptions and Evidence" (1992) 47 Am. Psychologist 511, 511.

53 See Michael L. Perlin, *The Jurisprudence of the Insanity Defense* (Carolina Academic Press, 1994) 6–7 (asking this question). Cf. Carmel Rogers, "Proceedings Under the Mental Health Act 1992: The Legalisation of Psychiatry" (1994) N.Z. L.J. 404, 408

("Because the preserve of psychiatry is populated by 'the mad' and 'the loonies,' we do not really want to look at it too closely – it is too frightening and maybe contaminating").

54 The pretexts of the forensic mental health system are reflected both in the testimony of forensic experts and in the decisions of legislators and fact finders. Experts frequently testify in accordance with their own self-referential concepts of "morality" and openly subvert statutory and case law criteria that impose rigorous behavioral standards as predicates for commitment or that articulate functional standards as prerequisites for an incompetency to stand trial finding. Often this testimony is further warped by a heuristic bias. Expert witnesses – like the rest of us – succumb to the seductive allure of simplifying cognitive devices in their thinking, and employ such heuristic gambits as the vividness effect or attribution theory in their testimony.
See Perlin, "Half-Wracked Prejudice," 18.

55 See, from an Australian perspective, Ian Freckelton, "Distractors and Distressors in Involuntary Status Decision-Making" (2004)12 Psychiatry, Psychol. & L. 88.

56 This section is largely adapted from Michael L. Perlin, "I Might Need a Good Lawyer, Could Be Your Funeral, My Trial: A Global Perspective on the Right to Counsel in Civil Commitment Cases, and Its Implications for Clinical Legal Education" (2008) 28 Wash. U. J. L. & Socl Poly 241, 246–49.

57 See generally for a historical overview, Michael L. Perlin and Robert L. Sadoff, "Ethical Issues in the Representation of Individuals in the Commitment Process" (Summer 1982) 45 Law & Contemp. Probs. 161.

58 (2001) Mont. (29 P.3d 485.

59 Perlin, "Global Perspective," 245.

60 *K.G.F.,*, 29 P. 3d at 488.

61 *Ibid.,* 491.

62 *Strickland v. Washington* (1984) 466 U.S. 668 (establishing weak effectiveness of counsel standard). See generally Michael L. Perlin, *Mental Disability Law: Civil and Criminal* (2nd ed, Lexis-Nexis Publishers, 2002), 261–67, paras 2B–11.2. In Australia, for controversies about representation of persons before mental health tribunals, see Valerie Williams, "The Challenge for Australian Jurisdictions to Guarantee Free Qualified Representation Before Mental Health Tribunals and Boards of Review: Learning from the Tasmanian Experience" (2009) 16 Psychiatry, Psychol. & L. 108; Ian Freckelton, "Mental Health Review Tribunal Decision-making: A Therapeutic Jurisprudence Lens" (2003) 10 Psychiatry, Psychol. & L. 44; Penny Weller, *Non-adversarial Justice & Mental Health Review Tribunals: A Reflexive Turn*, paper delivered to Non-adversarial Justice Conference: Implications for the Legal System and Society, 4–7 May 2010, accessible at http://www.aija.org.au/NAJ%202010/Papers/Weller.pdf.

63 *K.G.F.*, 29 P.3d at 491.

64 *Strickland*, 466 U.S. at 689.

65 *K.G.F.,* 29 P.3d at 492 (citing Michael L. Perlin, "Fatal Assumption: A Critical Evaluation of the Role of Counsel in Mental Disability Cases" (1992) 16 Law & Hum. Behav. 39, 53–54; "identifying the *Strickland* standard as 'sterile and perfunctory' where 'reasonably effective assistance' is objectively measured by the 'prevailing professional norms'").

66 *K.G.F.,* 29 P. 3d at 492–4, quoting Mont. Code Ann. § 53-21-101(1), Mont. Code Ann. § 53-21-142(1)), and Perlin, "Fatal Assumption," 47; see generally, Michael L. Perlin, "'Dignity Was the First to Leave': Godinez v. Moran, Colin Ferguson, and the Trial of Mentally Disabled Criminal Defendants" (1996).14 Behav. Sci. & L. 61.

67 *K.G.F.,* 29 P. 3d at 500.

68 *Ibid.*

69 *Ibid.*, 501.

70 Michael L. Perlin and Heather Ellis Cucolo, *Mental Disability Law: Civil and Criminal*, § 2B–11.3 (2012 Cum. Supp.).

71 *In re Detention of T.A. H.-L.* (2004) Wash. Ct. App. 97 P.3d 767, 771–72.

72 Perlin, *Best Friend*, 741–2.

73 See for example Camille A. Nelson, "Racializing Disability, Disabling Race: Policing Race And Mental Status" (2010) 15 Berkeley J. Crim. L. 1, 19 n. 63; Deirdre M. Smith, "The Disordered And Discredited Plaintiff: Psychiatric Evidence In Civil Litigation" (2010) 31 Cardozo L. Rev. 749, 809 n. 329; Bruce J. Winick, "The Supreme Court's Evolving Death Penalty Jurisprudence: Severe Mental Illness As The Next Frontier" (2009) 50 B.C. L. Rev. 785, 847; John W. Parry, "The Death Penalty and Persons with Mental Disabilities: A Lethal Dose of Stigma, Sanism, Fear of Violence, and Faulty Predictions of Dangerousness" (2005) 29 Mental & Physical Disability L. Rep. 667. A recent search of the WESTLAW JLR database found 152 references to "sanism" in articles other than those by the author.

74 This section is generally adapted from Perlin, "Silenced Are Heard," 143–58.
75 See Perlin, "Global Perspective," 252–3, quoting CRPD, Article 12.
76 CRPD, Article 13.
77 Perlin, "Global Perspective," 253.
78 On the significance of "cause lawyers" in the development of mental disability law in the United States, see Michael A. Stein, Michael E. Waterstone and David B. Wilkins, "Book Review: *Cause Lawyering For People With Disabilities*" (2010) 123 Harv. L. Rev. 1658.
79 CRPD, Article 1.
80 In two articles and a book chapter – all currently in press – I am examining the impact of the CRPD on such questions as the legitimacy of guardianship laws; see Michael L. Perlin, "'Striking for the Guardians and Protectors of the Mind': The Convention on the Rights of Persons with Mental Disabilities and the Future of Guardianship Law" (2013) Penn St. L. Rev. on juvenile punishment schemes; Michael L. Perlin, "'Yonder Stands Your Orphan with His Gun': The International Human Rights and Therapeutic Jurisprudence Implications of Juvenile Punishment Schemes" (2013) Texas Tech L. Rev.; and on the importance of mental health courts, see Michael L. Perlin, "*There Are No Trials Inside the Gates of Eden": Mental Health Courts, the Convention on the Rights of Persons with Disabilities, Dignity, and the Promise of Therapeutic Jurisprudence, in Coercive Care: Law and Policy* (Bernadette McSherry & Ian Freckelton, eds, Taylor & Francis, 2013). See also, generally, Michael L. Perlin, "Understanding the Intersection between International Human Rights and Mental Disability Law: The Role of Dignity" in Bruce Arrigo and Heather Bersot (eds), *The Routledge Handbook of International Crime and Justice Studies* (Routledge 2013, in press).
81 This section is generally adapted from Perlin, *Silenced Are Heard*, 21–42.
82 G.A. Res. 56/168, U.N. Doc. A/RES/56/168 (Dec. 19, 2001) (General Assembly Resolution).
83 Aaron A. Dhir, "Human Rights Treaty Drafting Through the Lens of Mental Disability: The Proposed International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities" (2005) 41 Stan. J Int'l L., 181, 182.
84 CRPD, Article 3(a).
85 CRPD, Article 8.
86 CRPD, Preamble, para. h.
87 Dhir, *supra* note 83, at 195.
88 Gerard Quinn and Theresia Degener, *Human Rights and Disability: The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability* (United Nations 2002), 14.
89 Michael Ashley Stein, "Disability Human Rights" (2007) 95 Calif. L. Rev. 75, 106.
90 Cees Maris, *A not = A: Or, Freaky Justice* (2010) 31 Cardozo L. Rev. 1133, 1156.
91 Sally Chaffin, "Challenging The United States Position On A United Nations Convention On Disability" (2005) 15 Temp. Pol. & Civ. Rts. L. Rev. 121, 140 (quoting Rosenthal).
92 See *Indiana v. Edwards* (2008) 554 U.S. 164, for a recent discussion of the role of dignity in the criminal trial process in cases involving criminal defendants with mental disabilities.
93 *Helen L. v. DiDario*, 46 F. 3d 325, 334 (3d Cir. 1995, *cert. denied*, 516 U.S. 813 (1995); *see also*, Michael L. Perlin and Deborah A. Dorfman, "'Is it More Than Dodging Lions and Wastin' Time?' Adequacy of Counsel, Questions of Competence, and the Judicial Process in Individual Right to Refuse Treatment" (1996) 2 Psychol. Pub. Pol'y & L. 114–36 (on how hearings in right to refuse treatment cases can enhance dignity values). See also Michael L. Perlin, "'What's Good is Bad, What's Bad is Good, You'll Find Out When You Reach The Top, You're on The Bottom': Are The Americans with Disabilities Act (and *Olmstead v. L.C.*) anything more than 'Idiot Wind?'" (1991) 35 U. Mich. J.L. Reform, 235–61 (on the ADA and dignity in general).
94 *Fleming v. Reid* (1991) 4 O.R. 3d 74, 86–7 (C.A.), *as discussed in* Aaron A. Dhir, "Relationships of Force: Exploring the Legal and Social Issues Surrounding Disability" (2008) 25 Windsor Rev. Legal & Soc. Issues 103, 109.
95 This section is generally adapted from Perlin, *Silenced Are Heard*, Chapter 10.
96 See, for example, David B. Wexler, *Therapeutic Jurisprudence: The Law as a Therapeutic Agent* (Carolina Academic Press, 1990); David B. Wexler and *Bruce J. Winick, Law in a Therapeutic Key: Recent*

Developments in Therapeutic Jurisprudence (Carolina Academic Press, 1996); Bruce J. Winick, *Civil Commitment: A Therapeutic Jurisprudence Model* (Carolina Academic Press, 2005); David B. Wexler, "Two Decades of Therapeutic Jurisprudence" (2008) 24 Touro L. Rev. 17.

97 For a transnational perspective, see Kate Diesfeld and Ian Freckelton, "Mental Health Law and Therapeutic Jurisprudence" in I. Freckelton and K. Peterson (eds), *Disputes and Dilemmas in Health Law* (Federation Press, 2006), 91.

98 Michael L. Perlin, *Lepers and Crooks*, 683–729; *Best Friend***;** *Expecting Rain*.

99 Bruce J. Winick, "Forward: Therapeutic Jurisprudence Perspectives on Dealing With Victims of Crime" (2009) 33 Nova L. Rev. 535, 535.

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102 Claire B. Steinberger, "Persistence and Change In The Life Of The Law: Can Therapeutic Jurisprudence Make A Difference?" (2003) 27 Law & Psychol. Rev. 55, 65.

103 Perlin, *Sanism Filter*; on its potential application to international law issues in general, see Roberto P. Aponte Toro, "Sanity in International Relations: An Experience on Therapeutic Jurisprudence" (1999) 30 U. Miami Inter-Am. L. Rev. 659.

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105 Susan Daicoff, "The Role of Therapeutic Jurisprudence Within The Comprehensive Law Movement" in Stolle et al. *Law as a Helping Profession*, 365–92.

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107 Warren Brookbanks, "Chapter 12" in Bernadette McSherry and Ian Freckelton (eds), *Coercive Care: Rights, Law and Policy* (Routledge 2013).

108 Amy D. Ronner, "The Learned-Helpless Lawyer: Clinical Legal Education and Therapeutic Jurisprudence as Antidotes to Bartleby Syndrome" (2008) 24 Touro L. Rev. 601, 627.

109 Amy D. Ronner, "Songs of Validation, Voice, and Voluntary Participation: Therapeutic Jurisprudence, Miranda and Juveniles" (2002) 71 U. Cin. L. Rev. 89, 94–5; see generally, Amy D. Ronner, *Law, Literature and Therapeutic Jurisprudence* (Carolina Academic Press, 2010).

110 Perlin, *Jurisprudence of the Insanity Defense* 443; Perlin, "They Keep It All Hid," 876: "To teach mental disability law meaningfully, it is necessary to teach about the core characteristics that contaminate it (sanism and pretextuality), to teach about the cognitive approaches that distort it (false ordinary common sense and cognitive-simplifying heuristics), and to teach the school of jurisprudence that can optimally redeem [TJ]."

111 Lord, Suozzi & Taylor, *supra* note 25, at 567. On the role of "voice" in other similar UN Conventions, see Aisling Parkes, "Tokenism Versus Genuine Participation: Children's Parliaments and the Right of the Child to be Heard Under International Law" (2008) 16 Williamette J. Int'l L. & Disp. Resol. 1, 16 (discussing how children's "voices are all too often frequently overlooked and undervalued").

112 On the relationship between TJ and international human rights law, see Perlin, *Silenced Are Heard*, 203–18.

113 Janet E. Lord and Michael A. Stein, *The Domestic Incorporation of Human Rights Law and the United Nations Convention on the Rights of Persons with Disabilities* (2008) 83 Wash. L. Rev. 449, 475.

114 Fennell, *Human Rights*, 107.

115 Ena Chadha and C. Tess Sheldon, "Promoting Equality: Economic and Social Rights for Persons with Disabilities under Section 15" (2004) 16 Nat'l J. Const'l L. 27, 42.

116 CRPD, Article 8.

117 On the law reform obligations of the CRPD, see Lord and Stein, *Domestic Incorporation*, 471.

118 See Paul Harpur and Richard Bales, "The Positive Impact of the Convention on the Rights of Persons with Disabilities: A Case Study on the South Pacific and Lessons from the U.S. Experience" (2010) 37 N. Ky. L. Rev. 363 (making this comparison).

119 See Janet Lord, "The U.N. Disability Convention: Creating Opportunities for Participation" *Business Law Today* (May/June 2010), 23, 24.

120 See Perlin, *Silenced Are Heard*, 144–52; "Guardians"; "Yonder"; Perlin, *Gates of Eden*.

121 Peter Blanck, "'The Right to Live in the World': Disability Yesterday, Today, and Tomorrow" (2008) 13 Tex. J. on C.L. & C. R. 367, 401.

122 Mary Donnelly, "From Autonomy To Dignity: Treatment For Mental Disorders and The Focus For Patient Rights" (2008) 26 Law in Context 37, 57.

123 Perlin, "A Change Is Gonna Come", *supra* note 22, at 498.

124 He has sung it, as of the end of his 2012 tour, 2098 times; see http://www.bobdylan.com/us/home.

125 http://www.lyricinterpretations.com/Bob-Dylan/All-Along-the-Watchtower.