

THE SOCIAL MODEL IN THE INTERNATIONAL CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

AGUSTINA PALACIOS¹

Abstract: Any analysis to be performed regarding disabilities requires a philosophical, sociological and regulatory framework. This paper takes as a starting point a philosophical framework which arises from those values and principles on which human rights are grounded. The sociological framework is built through the social model of disability, and the regulatory framework is provided by the International Convention on the Rights of Persons with Disabilities.²

Keywords: Disability, Human Rights, Social Model, International Convention, General Principles, Dignity, Non Discrimination.

Summary: I. AN OUTLINE OF THE SOCIAL MODEL; I.1. The Disregarding model; I.2. The Rehabilitation model; I.3. The Social model; II. DISABILITIES AS A MATTER OF HUMAN RIGHTS; III. SOCIAL MODEL AND THE APPROACH ON HUMAN RIGHTS PROVIDED BY THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES.

I. AN OUTLINE OF THE SOCIAL MODEL

As it is well known, the social model understands ‘disability’ as a situation derived from social structures and constraints, as opposed to the medical-hegemonic model, which approaches disability as a condition resulting from personal "deficiencies" to be solved by means of policies and performances aimed at normalizing those who "suffer" them (Barranco Aviles & Churruca Mugurza, 2014). The social model, which has been shaped, on the one hand, by political activism, and on the other hand, by the development underwent by sociology, is deeply enshrined in the First Human Rights Treaty of the 21st century: the International Convention on the Rights of Persons with Disabilities (Palacios, 2008).

In order to fully understand the social model of disability, it is worth performing a brief overview of some of the preceding paradigms on the subject matter. Throughout history, it is possible to identify several approaches on disabilities. In previous works, I

¹ CONICET Associate Researcher, Centro de Investigación y Docencia en Derechos Humanos “Alicia Moreau”, Facultad de Derecho, Universidad Nacional de Mar del Plata (aguspalacios@hotmail.com).

² Approved by the General Assembly on 13 December 2006 and entered into force in May 2008.

have pointed out the differences between those approaches by means of three models: the disregard model, the rehabilitation model and the social model of disability.³

I.1. The Disregarding model

On the basis of this first model, the causes for disabilities have been considered to be religious. According to this model, people with disabilities were unnecessary due to different reasons: they were deemed as useless for the community, they allegedly bore evil messages, they were the result of God's anger, or their lives -because they were so miserable-, were not worth living. Consequently, society decided to *disregard* people with disabilities, either through the enforcement of policies which nowadays would be considered to be eugenic, or by placing them right by the *mentally retarded* and the poor. Within this model there are two sorts of paradigms or sub models to be pointed out, which -although they are grounded on the same premises concerning the origins of disability- do not share their consequences or their main features:

a. The *eugenic sub model*, for the purposes of clarification, could be located on the Classical period of Ancient History. In the Greek and Roman Society, based on religious and political reasons, the growth of disabled children was tremendously undesirable. Moreover, the explanation for why some children born with functional disabilities was religious: in Ancient Greece, the birth of a disabled child was the result of a sin committed by the child's parents. In Rome, it was interpreted as a warning that the alliance with the Gods and Goddesses was no longer in place. In addition, the common understanding that a disabled person's life was not worth living along with the fact that it was deemed to be a true burden -either for the parents or for the remaining members of the community-, lead to the shared view that it was better to disregard these people through eugenic means, such as infanticide of children with functional diversities.

b. The *exclusion sub model*: Although many of the defining characteristics of this sub model have consistently appeared throughout history, an illustrative example can be found in the treatment provided to people with disabilities in the middle Ages. They were placed in the group of poor and marginalized people, predestined to be excluded. While the medieval religious explanations were different from those alleged by the ancients, and even when within Christianity the explanations were fluctuant-the power of God or the consequence of the original sin or the devil's work from the superstitious belief- the fact is that functional diversity was considered an immutable situation that had to be accepted with resignation. Priests and doctors were responsible for diagnosing whether a strange behavior was due a natural process or if it otherwise had an evil nature. However, as Aguado Díaz highlights, in many occasions the medical

³ This will be based on the models exclusively identified and developed in PALACIOS, A. (2008) *El modelo social de discapacidad: orígenes, caracterización y plasmación en la Convención Internacional sobre los Derechos de las Personas con Discapacidad*. Madrid: Cinca. See also, CUENCA GOMEZ, P. (2011) *Derechos humanos y modelos de tratamiento de la discapacidad*”, Papeles. *El Tiempo de los Derechos*. 3. p.1-16.

examination was subject to a theological *rationale* (Aguado Díaz, 1995). This sub-model's main defining characteristic is exclusion, either stemming from the understanding that the disabled are to be underrated and pitied, or due to fear or rejection as a result of the curses affecting them or because they are inherently dangerous. In other words, exclusion is the answer which brings tranquility to society: on the basis of fear or disparagement. Therefore, unlike the eugenic sub-model, there is no infanticide, although the majority of children with disabilities die as a result of omissions. Charity, mendacity and be the object of fun, have been the means of subsistence for them (Longmore & Umansky, 2001; Scheerenberger, 1984; Sticker, 1999).

I.2. The Rehabilitation model

This model understands that disability stems from a deficit of the person. The disabled are no longer deemed as useless or unnecessary *prima facie*, as in the previous model, but only as long as they are *rehabilitated*. This paradigm mainly aims at *normalizing* people, even if that entails making their disabilities disappear or hiding them. The main "problem" is thus the person, or better said, its limitations. Therefore, it is essential to physically, psychically and sensorially rehabilitate disabled people. Although the first signals given by the rehabilitation model can be traced back to the first years of the Modern World,⁴ the consolidation of the model -particularly in the regulatory arena- can be found in the early 20th century, at the end of the Great War.

Disability is considered exclusively a problem of the person, produced by disease, accident or a health condition that requires medical care provided by professionals in the form of individual treatments. As a result, the treatment of disability is aimed at healing the person, improving its behavior, or adapting him or her to life. Disabilities are addressed exclusively within the social welfare and social security regulatory framework, or within the rules and regulations addressing incapacitation and guardianship. Primary care is absolutely central, and, in terms of public policy, efforts concerning healthcare, institutionalization, special education and sheltered work are central (World Health Organization, 2001).

paradigm has meant, in turn, an important achievement in the field of recognition of certain rights of persons with disabilities progress, but however, it is criticized for various reasons.⁵ Fundamentally -in terms of its theoretically justification-

⁴ Juan Luis Vives' works illustrate this model. See PUIG DE LA BELLACASA, R. (1993) *La Discapacidad y la Rehabilitación en Juan Luis Vives. Homo homini par*. Madrid: Real Patronato de Prevención y de Atención a Personas con Minusvalía.

⁵ This criticism are addressed to a model grounded on a particular ideology, yet by no means shall be construed to be oriented towards the *rehabilitation process* with respect to functional diversity of a disabled person, a totally useful and necessary tool. See ABBERLEY, P. (1998) Trabajo, Utopía y deficiencia. In: Barton, L. (ed) *Discapacidad y Sociedad*. Madrid: Morata S.L.; BARNES, C. (2000) *Disabled People in Britain and Discrimination. A case for Anti-discrimination Legislation*. 3rd.Ed. London: Hurst and Company; BARNES, C. (1998) Las teorías de la discapacidad y los orígenes de la opresión de las personas discapacitadas en la sociedad occidental. In Barton, L. (ed) *Discapacidad y Sociedad*, cit.; MORRIS, J. (1996) *Encuentros con desconocidas. Feminismo y discapacidad*. Madrid:

it is criticized that the successful integration pursued by this model -even when it depends on a variety of strategies of assimilation- indicates the existence of a disturbed ideology called for Sticker (1999) as the social ideal of the eraser. In this connection, the passport to integration turns to be disappearance or, better said, the suppression of the existing differences. This is due to the fact that people with disabilities are construed as *deviated* from an alleged standard of normality. However, this model ignores that the setting of these parameters of normality is not neutral, it is biased in favor of physical and psychological parameters of those who constitute the culturally dominant stereotype (Courtis, 2004).

In accordance with Iris Marion Young, it is necessary to underline that the meaning of "standard" or "impartial" owes much to two ideological functions. Firstly this appealing to impartiality feeds cultural imperialism as it allows that the experience and perspective of privileged groups to be presented as universal. Secondly, the belief that bureaucrats and experts are able to perform their decision-making power in an impartial manner, legitimizes the authoritarian hierarchy (Young, 2000). Precisely the influence of social factors in creating the phenomenon itself is addressed in another model of disability, which is described in the following section.

I.3. The social model

The social model's philosophy changes the focal point of the disability "phenomenon." Disability is no longer explained on the basis of personal "deficiencies," to move to be explained by those deficiencies of society as a whole, which result in disabling obstacles (Brogna, 2012). Therefore, it is considered that the causes of disabilities are predominantly of a social character; and that people with disabilities can fully participate in society, respecting their consideration as persons, who in certain features or concerning certain conditions differ from the average person (Cuenca Gómez, 2014). This model is closely tied to the assumption of values inherently related to human rights, and aims to promote respect for human dignity, equality and personal freedom, promoting social inclusion (De Asís Roig, 2013; Cuenca Gómez, 2014). This is based on certain principles: independence, non-discrimination, universal accessibility, standardization of the environment, participation, etc. The starting point consists in stating that disability is a theoretical construct and a tool for social oppression, as well as the outcome of a society which neither considers nor acknowledges persons with disabilities. Similarly, it calls the attention on personal autonomy in order to support the right of people with disabilities to decide freely about their own lives, and for that purpose it focuses on removing any obstacle to provide equal opportunities (Palacios, 2008).

Essentially, the social model has risen, has been developed and has been built from the rejection of the premises from the preceding model. One of the social model's

Narcea; OLIVER, M. (1998) Una sociología de la discapacidad o una sociología discapacitada?. In Barton, L. (ed), *Discapacidad y Sociedad*, cit.; SILVERS, A., WASSERMAN, D. & MAHOWALD, MB., (1998) *Disability, Difference, Discrimination. Perspective on Justice in Bioethics and Public Policy*. New York: Rowman & Littlefield Publishers.

core premises asserts that disabilities do not stem from individual causes -as it is argued by the rehabilitation model-, but from predominantly social causes. The phenomenon is not rooted on individual constraints, but on society's limitations to provide services and to adequately ensure that the needs of the people with disabilities are taken into consideration when organizing society as a whole.⁶

The social model requires a re-examination of the design and implementation of policies on this matter. Thus, if the causes of the disability are social, the answers shall not be individually oriented, but rather expected to be found in society. Moreover, the previous model focuses on rehabilitating or normalizing persons with disabilities, whereas the model under examination here advocates for the rehabilitation or normalization of society, which must be thought and designed to cope with universal needs.

There is a large overlap between the social approach on disabilities and the underlying values of human rights, i.e.: dignity; freedom as autonomy in the sense of development of the moral subject which requires, inter alia, that the person is the center of the decisions that affect them; the inherent equality of all human beings –comprising the existent differences, which also requires the satisfaction of certain basic needs, and solidarity. (De Asís Roig, 2004).

Based on this, in the last few decades, there have been several approaches to answer to needs of people with disabilities on the basis of inherent values on which human rights are grounded. This has generated a different look to the person with disabilities, focusing first on its status as a human being with equal rights and dignity with others, and secondly in a condition (the functional diversity) that accompanies it, and in certain circumstances requires specific measures to ensure the enjoyment and exercise of the rights on equal conditions to other people. (Palacios, 2008).

To that end, a series of promotional techniques are proposed -such as affirmative action measures- as well as the enshrinement of certain principles with a notable impact on the relevant policies -non-discrimination, exercise of autonomy, independent living, universal accessibility, civil dialogue, universal design, cross-cutting disability policies, and inclusive education, among others-. In fact, these principles pursue the same goal: persons with disabilities should have equal opportunities as other people when designing and developing their own life plans.⁷

II. DISABILITIES AS A MATTER OF HUMAN RIGHTS

Until recently, understanding disabilities as a matter of human rights was not commonly accepted, and social responses towards people with disabilities have varied throughout history, even during the same period of time and culture (Ingstand &

⁶ It can be considered that the social model was born in England or United States on the late 60s or early 70s of the 20th century.

⁷ In this connection, See DE LORENZO GARCIA, R. (2003) *El futuro de las personas con discapacidad en el mundo. Desarrollo humano y Discapacidad*. Madrid: Ediciones del Umbral.

Reynolds, 1995). The role played by a person with disabilities in a given social context has not been dependant on the nature, kind or degree of the disability in question, nor on the personal characteristics or personal of the person in question. On the contrary, it has depended on the conception and dominant social attitudes towards the phenomenon itself (Aguado Díaz, 1995). As it has been discussed in the previous paragraph, these conceptions and social responses have been far from homogeneous or static, but they do have wavered between two main approaches (Palacios, 2014).

The first of them falls within the *demonological tradition*, which deems disabilities as something strange to human nature: sins, God's punishment, and thus an incontrollable and unchangeable situation. The second approach perfectly fits in the *naturalist tradition*, which deals with disability as an illness, triggered by natural and/or biological and/or environmental causes and thus considers disabilities to be changeable. As a result, this approach promotes prevention and healing treatments, integration strategies, etc (Palacios, 2014).

The late 20th century has witnessed the transition to a new approach, which falls within the *social tradition*, on the basis of which disabilities are construed as a complex phenomenon, mainly integrated by social factors. Therefore, it aims at removing prejudices, stereotypes, practices and obstacles which prevent people with functional diversities⁸ from getting involved in society on an equal basis with everyone else. This new system has laid the foundations for disabilities to be framed by the human rights discourse.

In the theoretical arena, sociology laid the foundations in order to justify approaching disability from a different perspective: the social model, on the basis of which disabilities are the result of the *interaction* between the condition of a given person (a physical, mental, intellectual or sensory diversity) and social barriers preventing him or her from fully participating in society. Furthermore, the defining lines of disability as a "phenomenon" are modified thereby, and disabilities cease to be explained -in a reductionist manner- as personal "deficiencies," starting to be construed as a consequence of the interactions between people and their surroundings (or as the result of the various "deficiencies" of society as a whole) (Brognna, 2012).

If disability is considered to stem from social causes, the answers shall not be individually oriented, but rather targeted to society. In this connection, the social model stresses the importance of not emphasizing on rehabilitation or creating a standard setting for the individual, and advocates for *rehabilitating* or *normalizing* the society, which should be thought and designed to cope everyone's needs.

This model is closely tied to certain principles which account for the grounds for human rights: dignity; freedom as meaning autonomy, -in the sense of development of

⁸ The term "functional diversity" is preferred over the notion of "deficiency", or "condition" because in such a way the negative connotation of the words referring to the features of human beings is removed. See PALACIOS, A. and ROMANACH, J. (2007) *El modelo de la Diversidad*, Madrid: Diversitas. p. 34-37.

the moral subject -which requires, among other aspects, that the person becomes the center of any decision that affects him/her; inherent equality in any human being- considering the existing differences-, which at the same time requires the satisfaction of some basic needs; and solidarity (De Asís Roig, 2004; Cuenca Gómez, 2014).

As it has been asserted in previous works, understanding disabilities as a matter of human rights is not only about semantics (PALACIOS, 2014) it also gives rise to certain outcomes in the regulatory, axiological and sociological arenas.⁹

In the **regulatory scope**, both international law instruments of human rights and national rules and regulations have dealt with this subject from this perspective. See, for instance, the approval of the first Human Rights Treaty in the 21st century, which addresses -human- rights of the people with disabilities and which will be discussed in the following section.

In the **axiological arena**, this notion compels us to rethink the notion of disability on the basis of the human rights discourse, which leads to *break down* the very idea of human dignity, from a different perspective which shall go beyond certain perspectives grounded on abilities or in individual characteristics.¹⁰ As Rafael de Asís has clearly stated, the human rights discourse and its focal point, the idea of dignity, are grounded on an understanding of individuals characterized by its capacities, particularly by its rational capacity, and by performing a given role in society which takes into account the empowerment of individuals and their contribution or social utility (De Asís Roig, 2013). This characterization has had a notable impact on the exclusive consequences concerning the disabled (Cuenca Gómez, 2014).

Similarly, it has remarkable implications as for the **sociological dimension**, which calls for a different vision when drafting and implementing public policies on this matter (Acuña & Bulit Goñi, 2010). In the first place, it requires acknowledging and respecting functional diversity of a person as a natural element of human diversity, just as race or gender (as well as dealing with specific biases regarding disabilities, attitudes, and other elements that hinders a full enjoyment of human rights) (Brogna, 2009). Secondly, it is central to assume the responsibility of ensuring that rights are exercised with no discrimination on the grounds of disability, both on the Government's side (the ultimate responsible) and on society's side. Finally, the main implication is related to the non-consideration of people with disabilities as subject to social welfare policies, but as entitled to rights, on an equal basis with others.

⁹ In this connection, See the tridimensional theory of law posed by GOLDSCHMIDT, W. (1976) *Introducción filosófica al Derecho*. 5th Ed. Buenos Aires: Depalma.

¹⁰ This is far beyond the purpose of this paper, but it can be found with an in-depth development in: PALACIOS, A. (1998) *El modelo social de discapacidad: orígenes, caracterización y plasmación en la Convención Internacional sobre los Derechos de las Personas con Discapacidad*. Madrid: Cinca, p. 154. See also the fantastic work of CUENCA GOMEZ, P. (2012) Sobre la inclusión de la discapacidad en la teoría de los derechos humanos. *Revista de Estudios Políticos*. 158. p. 103-137.

Although stating that persons with disabilities are right holders may seem obvious, it is clearly not that obvious once we take a look at the afore historical record stated and at the infringements suffered thereby when they try to exercise their rights "on the basis of the said disability".¹¹ For a very long time, this has brought along their consideration as entitled to healthcare and social welfare policies, but not as legal subjects, or sometimes, even dealing with them as "legal subjects" has been conditioned by the degree and/or kind of disability, or by the differentiation between the rights to be afforded to them.¹²

III. SOCIAL MODEL AND THE APPROACH ON HUMAN RIGHTS PROVIDED BY THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

The International Convention on the Rights of Persons with Disabilities sets forth the human rights standards that should not to be missed when it comes to disability. It contains 50 articles by means of which it addresses substantive rights on the basis of a non-discrimination clause in the context of disabilities. For the purposes of brevity and because it would be far beyond the subject of this paper, only certain concepts and general principles which are deemed to be true focal points of this regulatory instrument will be briefly discussed herein.

The purpose of the Treaty is to "promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity" (Art.1 CRPD, 2006). Based on two fundamental principles -inherent dignity and non-discrimination- one of its main goals has been to *adapt* the relevant human rights Treaties provisions to the context of disability (Quinn, 2006).

The CRPD adopts the social model of disability from its Preamble, which asserts that "disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others" (Preamble CRPD, 2006). The social model's conceptualization is also reflected on Article 1, when it sets forth that "persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others" (Art.1 para.2 CRPD, 2006).

¹¹ MENTAL DISABILITY RIGHTS INTERNATIONAL and CENTRO DE ESTUDIOS LEGALES Y SOCIALES (2007) *Vidas arrasadas. La segregación de las personas en los asilos psiquiátricos argentinos. Un informe sobre derechos humanos y salud mental*. Washington DC: MDRI.

¹² This can be shown by the process carried out by the United Nations in the drafting of the CRPD, for instance, regarding legal capacity. See PALACIOS, A. (2012) Reinterpretando la capacidad jurídica desde los derechos humanos. Una mirada desde la Convención Internacional sobre los Derechos de las Personas con Discapacidad. In PALACIOS, A. and BARIFFI, F. (eds.) *Capacidad jurídica, discapacidad y derechos humanos. Una revisión desde la Convención Internacional sobre los Derechos de las Personas con Discapacidad*. Buenos Aires: Ediar. p. 210-236.

In this connection, it highlights two main issues. Firstly, that disability is an evolving concept and not an absolute one. Secondly, that disability is the combined result of individual functional diversities and the *attitudinal* barriers of persons and the environment. These barriers limit and even avoid the participation of persons with disabilities on an equal basis with others. On the other hand, it is central to remark that the Convention's definition is not close-ended, but rather it *comprises* the mentioned people, thus this article shall be interpreted as floor (a starting point) from which any other interpretation that benefits or extend its protective framework should be applied.

Right by this rule, the concept provided by the Convention about "discrimination on the basis of disability" shall be read, as it understands that discrimination means "any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation" (Art.2 CRPD, 2006). Reasonable accommodation means, according to the CRPD, "necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms" (Art.2 CRPD, 2006).

The provision discussed hereby shall be examined along with Article 5, on equality and non-discrimination.¹³ Both rules agree on the fact that what is prohibited is discrimination "on the basis of" disability. Hence, Gerard Quinn shows that the valuable part of that wording is its ability to stress the importance of the phenomenon of discrimination, regardless of the particular features of the person in question (Quinn, 2007).¹⁴ Similarly, the rule establishes that discrimination can be triggered by any

¹³ "1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law. 2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds. 3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided. 4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention".

¹⁴ The foregoing implies acknowledging that people can be discriminated against "on the basis of" disability even if they are not disabled, while being treated on a discriminatory fashion because they are considered to have a disability. This was the stance of the Canada Supreme Court in 2000, in the *Mercier* affair, where a tendency was established and applied to lower courts with respect to the inclusion of subjective perceptions on disability within the definition of disability. Quebec (Commission de droits de la personne et des droits de la jeunesse) v Montreal; Quebec (etc.) v Boisbriand (City), [2000] 1 S.C.R. On the other hand, those people who can be susceptible to having a disability are also subject to being discriminated against "on the basis of" disability, even if they do not have it at that time. Quinn points out that, in that case, once again, if the focus is left on discrimination, then it makes sense to assert that this category would also be covered by the protective scope of the anti-discrimination law provided by the Convention. Similarly, there may be other people who are not disabled, but who work with or are related to people who do have disabilities. This would include, for instance, a disabled child's mother or father who was seeking a new place in the labor market or who was trying to enroll in a healthcare plan. These

distinction, exclusion or restriction on the basis of disability that has the *purpose* or the *effect*. Therefore, when assessing a given action, practice or rule, it is not relevant nor accounts as a cause of exemption the lack of intention to discriminate, since what really worries the CRPD is assessing whether the "effect" entails the infringement of the enjoyment or exercise of a given right on an equal basis (Palacios, 2008).

The principles enshrined in the Convention portray the social model's philosophy and are particularly important when drafting policies, interpreting or enforcing its clauses, as well as when inquiring on the rights protected thereby along with the obligations established. According to Article 3, these are the following: "a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons; b) Non-discrimination; c) Full and effective participation and inclusion in society; d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; e) Equality of opportunity; f) Accessibility; g) Equality between men and women; h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities."

Paragraph a) refers to three closely related principles or values -**dignity, autonomy and independence**-, which could be summarized in the first of them, i.e., the idea of human dignity. The notion of *human dignity* is the keystone on which human rights are grounded. It is the backbone of the human rights sub-system. This notion reinforces the idea that people with disabilities have a role to play in society, which must be taken into account regardless of any economic or social utility consideration (Quinn, 2006). It is necessary to note that if we take the value of autonomy as a starting point, the mere idea that each and every person is self-sufficient, we can clearly notice that persons with disabilities are still denied their right to make their own decisions about their lives. From the social model, the right answers for those people who see how their functional autonomy is constrained -or for those who are perceived with such restriction- is no other than supporting their autonomy, and by no means *superseding* it.¹⁵

This principle, which comprises dignity, autonomy and independence, constitutes the focal point in virtue of which the Convention shall be construed and enforced. Although it is embedded in each and every article, it is particularly reflected in Articles 12 and 19, on equal recognition before the law and on living independently and being included in the community respectively.¹⁶

people run the risk of being discriminated against "on the basis of disability" just because their relatives are disabled. *Idem*

¹⁵ This is the paradigm clearly embedded in Article 12 of the Convention regarding legal capacity.

¹⁶ The mentioned provision sets forth that the States Parties: "States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that: a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement; b) Persons with disabilities have access to a range of in-home, residential and other

Paragraphs b), c), d) and e) comprise four principles; namely: **non-discrimination** (par. b); **Full and effective participation and inclusion in society** (par. c); **Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity** (par. d); and **equality of opportunity** (par. e).

These four principles account for distinct facets of the principle of equality, which entails assuming that every person is of inestimable value as human beings, and that the said value is the same for everyone, regardless of any personal condition, beyond any physical, mental, intellectual or sensory diversity. At this moment, some very complex issues come into play, which have been summarized by means of framing this group of people who suffer situations of vulnerability and within a description which is not easy to counteract, which can be summarized by saying that people with disabilities are socially excluded. Hence, we can assert that every access point to daily life structures -education, employment, family, social interaction, etc. - is mainly established with respect to the norm -in this case, that of those who *are not* disabled-. In this connection, as normally there is no adaptation foreseen as for *deviations* or *differences* with respect to the chosen norm, differences provide the basis for subtle (and sometimes not that subtle) discriminations (Degener & Quinn, 2000). And even though there are various manners of dealing with the right to equal treatment and fighting against discrimination, within the Convention there is a consensus about the choice of this right in its version of equality of opportunity (CAMPOY CERVERA, 2005).

The Convention assumes, through its principles and by means of the rights covered thereby, an overarching notion of equality, which is not just non-discrimination -formal equality-. It embraces equality of opportunity, which in certain cases requires active measures -material equality-, which necessarily entail respecting the difference and accepting persons with disabilities as part of human diversity and human condition. This obviously brings along implementing policies concerning recognition, aimed at accomplishing full and effective participation of persons with disabilities in society.¹⁷ In this vein, within the context of disability (as with all vulnerable groups of people) the implementation of affirmative action measures and redistributive policies shall be accompanied by policies pursuing recognition of people with disabilities and their situation in order to achieve the goals and be truly effective.¹⁸

community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community; c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.” See MARAÑA, J. and LOBATO, M. (2003) El movimiento de vida independiente en España. In VIDAL GARCÍA ALONSO, J. (eds.) *El movimiento de vida independiente*. Madrid: Fundación Luis Vives; and DE ASÍS ROIG, R. and PALACIOS, A. (2007) *Derechos Humanos y Situaciones de Dependencia*. Madrid: Dykinson.

¹⁷ On this subject, see: YOUNG, I. M. (2000) *La justicia y la política de la diferencia*. Madrid: Catedra.

¹⁸ It seems fairly obvious that what the social model's philosophy has always deemed important regarding persons with disabilities is nothing but their difference. However, the claims from this model have focused on the right to equality, yet rejecting to get into even considering their differences. Maybe this is due to the fact that persons with severe disabilities have not undergone a trouble less transition from exclusion to equality. See MORRIS, J. (1996) *Encuentros con desconocidas. Feminismo y discapacidad*. Madrid: Narcea; SILVERS, A. (1998) *Disability, Difference, Discrimination. Perspective on Justice in Bioethics and Public Policy*. New York: Rowman & Littlefield Publishers Inc.

Finally, it must be taken into account that the aforementioned principles are enshrined in Article 5, on equality and non-discrimination, and throughout the Convention, at the time of guaranteeing each and every substantive right protected thereby (Rosales, 2013).

Another principle stemming from the social model which is also closely tied to equality is **universal accessibility**. The obstacles faced by persons with disabilities when exercising their rights are the result of a society exclusively thought for an average standard person (the model of which is normally provided by a non-disabled man). In order to remove these barriers, the CRPD puts forward various strategies, which require a wide and inclusive look at human diversity.

Universal accessibility accounts for the main strategy, since it ensures that every person is able to gain access, to participate. It is an implied condition for the exercise of rights. Ultimately, it is part of the core content of every single one of them.

In order to achieve this accessibility condition there are two supplementary strategies to be put in place: universal design (for every men and women) and reasonable accommodation.

Universal design involves, from the starting point, conceiving or projecting environments, processes, goods, products, services, objects, instruments, devices or tools, so that they can be used by every person. By means of universal design, the attainment of universal accessibility is attempted. It is the means, the instrument, and the activity aimed at achieving that goal.¹⁹

Reasonable accommodation means every adjustment aimed at adapting the surroundings to the specific needs of certain persons, who, due to different reasons, are in a special situation which has not been able to be foreseen through universal design. These adjustments tend to ensure participation on an equal basis.²⁰ The very notion of reasonable accommodation shall not be limited to disability, since any person can be (or in fact is) subject to reasonable accommodation.

Taking into consideration all of the foregoing, it could be asserted that accessibility is the ideal situation, universal design would be a previous general strategy to achieve that ideal situation, and reasonable accommodation would be a particular strategy to be put in place when the universal design preventive purposes do not ensure accessibility.

In previous papers, it has been stated that these concepts are sufficiently developed within the architectural and communicational accessibility scope; and to a lesser extent, with respect to the attitudinal accessibility, where it is necessary to add a

¹⁹ Article 2 of the CRPD

²⁰ Idem

strategy in order to aspire to universal accessibility: support systems (Palacios, 2012).²¹ The support scheme provided by the CRPD is based on the assumption that the person does not need a protective measure depriving him or her from exercising his or her legal capacity. On the other hand, what is truly required is a set of measures, aimed at providing the necessary assistance in order to allow the exercise of the said legal capacity.²² This entails creating and/or adapting tools intended to grant access to the exercise of legal capacity, i.e., decision-making in its own name with the necessary support in virtue of his or her specific needs (in other words: "a custom suit").²³

The Convention embraces accessibility in various forms, among others, as a principle in paragraph f) in Article 3 and as a right in Article 9. It is central to highlight that universal accessibility has been foreseen not only as a right but also as a principle, since this right-principle turns out to be an essential precondition for the exercise of rights -on an equal footing- for everyone, as well as for ultimately attaining human dignity on an equal basis along with an unrestricted development of personality. On the other hand, and the importance of this should be stressed, if the Convention assumes that disability is a complex phenomenon, integrated by social factors which translate into obstacles, universal accessibility becomes one of the best ways of preventing disability. Along these lines, it could be asserted that disability prevention is comprised both by preventive measures (such as those applied to car accidents) as well as those designed to preventing the construction of inaccessible environments. Obviously, in the light of its subject matter and its scope, the prevention enshrined in this Convention under examination falls within the second kind of measures.

In addition, the Convention clearly establishes that the lack of universal accessibility can be translated into discrimination. It is explicitly set forth in relation to the absence of reasonable accommodation in Article 2, when defining discrimination on

²¹ See also, CISTERNAS, M. S. (2012) *Las obligaciones internacionales para los Estados Partes en virtud del artículo 12 de la CDPD, vínculos con el artículo 13 e impacto en el Derecho interno*. In PALACIOS, A. and BARIFFI, F. *Capacidad jurídica, discapacidad y derechos humanos*. Buenos Aires: Ediar; ROSALES, P. (2012) *Discapacidad, Justicia y Estado: acceso a la justicia de Personas con Discapacidad*. Buenos Aires: Ministerio de Justicia y Derechos Humanos de la Nación; CUENCA GÓMEZ, P. (2010) *Estudios sobre el impacto de la Convención Internacional sobre los Derechos de las Personas con Discapacidad en el Ordenamiento Jurídico Español*. Madrid: Dykinson.

²² On this subject, see CUENCA GÓMEZ, P. (2012) *Los derechos fundamentales de las personas con discapacidad. Un análisis a la luz de la Convención de la ONU*. Madrid: Universidad de Alcalá; BARIFFI, F. (2014) *El régimen jurídico internacional de la capacidad jurídica de las personas con discapacidad y sus relaciones con la regulación actual de los ordenamientos jurídicos internos*. A thesis submitted in partial fulfilment of the requirements of University of Carlos III of Madrid for the Degree of Doctor in Law.

²³ It is also necessary to clearly differentiate between different kinds of "support." This differentiation shall be firstly established with respect to the kind of action, and secondly in relation to the necessary kind of support element. Regarding the first statement, it is necessary to differentiate between actions which are essential to life as a whole (marriage, maternity, surgeries, purchase and sale of a house, donations) and those necessary for everyday life (daily transactions, travelling, joining a sports club). With regards to the second statement, it is essential to make available for the disabled person in question different kinds of support elements, adapted to his or her particular situation. An in-depth study can be found in PALACIOS, A. and BARIFFI, F. (2012) *Capacidad jurídica, discapacidad y derechos humano*. Buenos Aires: Ediar

the basis of disability, but it is fairly evident that the inaccessibility would fit into "any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms" provided thereby.²⁴

Another principle enshrined in Article 3 is **equality between men and women**.²⁵ In this regard, the Convention's approach is twofold. On the one hand, a specific article on the subject matter, and on the other hand, the cross-cutting nature of the gender perspective throughout the legal instrument. During the drafting stage, it was hard to decide whether it was convenient to put in place just one article on disabled women, a cross-cutting perspective throughout the Convention as a whole, or both. It was finally decided to put in place the said twofold approach, which on the one hand implies a specific article -for visibility purposes- and on the other the cross-cutting nature of the gender issues throughout the Convention -although some could say that this cross-cutting character did not touch on every article.²⁶

Thus, the specific article is worded as follows: "Article 6. Women with disabilities. 1. States Parties recognize that women and girls with disabilities are subject to multiple discriminations, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms. 2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention."

This specific provision acknowledges, among other issues, the transversal discrimination suffered by women with disabilities, along with the obligation to implement measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.²⁷ Furthermore, as it has been asserted, the Convention

²⁴ On this subject, see ASIS ROIG, R. (2007) *Sobre la accesibilidad universal en el Derecho*. Madrid: Dykinson

²⁵ See PELAEZ NARVAEZ, A., and VILLARINO, P. (2012) *La transversalidad del género en las políticas públicas de discapacidad*. Madrid: Cinca; SERRA, M.L. (2014) *Feminismo y discapacidad. Derechos y Libertades*. 31. p. 251-274

²⁶ The advantage over a specific article was to call the States' attention on the main gender issues at stake, as well as on the need to implement specific measures aimed at solving gender issues. However, some delegations put forward that they feared that it would happen what happened with the Convention on the Rights of the Child, which was subsequently construed by the States parties as if children with disabilities were only covered by Article 23, and not by the remaining provisions. The work following the Convention on the Rights of the Child showed that States only informed about children with disabilities by means of Article 23, just applying that provision, and they did not draft any report whatsoever on the situation of children's rights on the basis of the Convention as a whole (in a cross-cutting manner).

²⁷ As for disabled women, rights may be subject to restrictions, constrains and/or infringements, which result from a structural and transversal discrimination (regularly suffered by women with disabilities). This sort of discrimination is not set up by a mere addition of conditions (gender and disability) in given simultaneous discrimination situations, but it is actually triggered by a new condition stemming from those factors combined, and this new condition is more complex than the mere addition of the said factors, and many other conditions may be added to the latter. BARRERE UNZUETA, M.A. and

chooses a cross-cutting perspective when it comes to ensuring certain rights, which is embedded in those articles regulating awareness-raising (Article 8), freedom from exploitation, violence and abuse (Article 16), health (Article 25), the right to an adequate standard of living and social protection (Article 28) along with the formation of the Committee on the Rights of Persons with Disabilities (Article 34).

Notwithstanding certain omissions (Palacios, 2012), it is considered that the Convention shall be given credit particularly because of this twofold approach. That is why the provisions which required a gender perspective and did not have it may be covered by Article 6, the Preamble and the remaining human rights protection instruments by means of a systematic interpretation applicable in full to disabled women.

The last principle provided by Article 3 involves **respect for the evolution of the abilities of children with disabilities as well as for their right to preserve their identity**.²⁸

As boys and girls acquire natural capacity, they are able to exercise their own rights by means of their increasingly acquired legal capacity. However, with regards to teenage children with disabilities, there is normally a constraint when it comes to the exercise of their own rights. In this connection, the CRPD deemed necessary an explicit reference to the rights of disabled boys and girls in relation to their development abilities, facing the risk that, if this was not done, they were excluded *de facto*. In fact, this conclusion is directly inferred from the principles of dignity, autonomy and independence, and it is also embedded in the right to an independent living along with the right to participate in the community, yet adapted to the circumstances of children and teenagers.²⁹

As with gender, the Convention adopts a twofold approach regarding the protection of children with disabilities. On the one hand, it devotes a specific article, giving visibility to the issue. On the other hand, it adopts a cross-cutting perspective throughout the Convention.

Hence, Article 7 on children with disabilities establishes the following: “1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with

MORONDO TARAMUNDI, D. (2011) Subdiscriminación y discriminación interseccional: elementos para una teoría del derecho antidiscriminatorio. *Anales de la Cátedra Francisco Suárez*. 45

²⁸ Regarding their right to preserve their identity, the approach provided by the Deaf shall be included, as well as their consideration as a cultural and linguistic minority. In this vein, the CRPD regulates sign language from a twofold perspective. Firstly -on the basis of the social model- as an accessibility condition; secondly -by acknowledging them as a cultural and linguistic minority- as part of their right to preserve their identity. See CUENCA GÓMEZ, P. (2012) *Estudios sobre los Derechos de las Personas Sordas*. Madrid: Dykinson.

²⁹ See, on the application of this principle to children in general, the scholarly work of CAMPOY CERVERA, I. (2006) *La fundamentación de los derechos del niño: modelos de reconocimiento y protección*. Madrid: Dykinson.

other children. 2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration. 3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.”

In the first place, the provision sets forth a general equality clause with the remaining children, for the attainment of which the States Parties undertake the commitment of adopting the measures required to that end.³⁰ It is a wise provision, which matches the social model of disability in this subject.³¹

Secondly, the best interest principle is established as a key consideration regarding every activity related to children with disabilities. It is important to highlight that this article's drafting process give rise to interpretations which shall take into account both autonomy and equality but also the specific features of disability and its implications in this context when it comes to clarifying the child's best interest (Palacios, 2008).

Thirdly, it is important to refer to the disabled child's participation in every decision by which he or she is affected. This has a considerable importance from the social model approach, on the basis of which the need to foster autonomy is highly stressed. Childhood is taken into account as the context, but the need for children and teenagers to be involved in the decisions which affect them is also highlighted, in the light of their age and maturity. At this point, the Convention considers both *age* and *maturity*, when considering their opinions (thus establishing an equal treatment as any other child or teenager).

These two criteria, age and maturity, in a certain way shall govern any assessment to be performed with respect to their autonomy. These assessments are not to be based upon the kind or degree of functional diversity (as it normally happens) nor on the diagnosis performed on these children, which directly connects us with the philosophy of the social model via the non-discrimination on the basis of disability clause discussed before. These children, to the same extent as any other child, shall be listened to and taken into account when they participate in the decision-making processes by which they are affected. To this end, it is important not to adopt a medical approach focused on their "anomaly" or their diagnosis, yet it is advisable to simply verify the same elements which would be verified if any other child or teenager was to make a decision.

On the other hand, from a cross-cutting perspective, the Convention assumes throughout its provisions the following issues which have a more direct impact on

³⁰ “1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.”

³¹ And a way of approaching the rights of children with disabilities, which had already been pointed out in paragraphs p) and, above all, r) of the Preamble.

children, among which the ones listed below are particularly remarkable: the right to political participation (Article 4 on general obligations); respect for home and family (Article 23); the right to education (Article 24); participation in cultural life, recreation leisure and sport (Article 30).

REFERENCES

- ABBERLEY, P. (1998) Trabajo, Utopía y deficiencia. In Barton, L. (ed.) *Discapacidad y Sociedad*. Madrid: Morata S.L.
- ACUÑA, C.H. & BULIT GOÑI, L.G. (2010) *Políticas sobre discapacidad en Argentina: el desafío de hacer realidad los derechos*. Buenos Aires: Siglo XXI Editores.
- AGUADO DÍAZ, A. (1995) *Historia de las deficiencias, Colección Tesis y Praxis*. Madrid: Escuela Libre Editorial
- BARIFFI, F. (2014) *El regimen jurídico internacional de la capacidad jurídica de las personas con discapacidad y sus relaciones con la regulación actual de los ordenamientos jurídicos internos*. A Thesis Submitted in partial fulfillment of the requirements of Universidad Carlos III de Madrid for the degree of Doctor of Law.
- BARNES, C. (1998) Las teorías de la discapacidad y los orígenes de la opresión de las personas discapacitadas en la sociedad occidental. In BARTON, L. (ed.) *Discapacidad y Sociedad*. Madrid: Morata S.L
- BARRANCO AVILÉS, M.C., & CHURRUCA MUGURUZA, C. (2014) *Vulnerabilidad y protección de los derechos humanos*. Valencia: Tirant Lo Blanch.
- BARRERE UNZUETA, M.A. & MORONDO TARAMUNDI, D. (2011) Subordiscriminación y discriminación interseccional: elementos para una teoría del derecho antidiscriminatorio. *Anales de la Cátedra Francisco Suárez*. 45.
- BERNES, C. (2000) *Disabled People in Britain and Discrimination. A case for Anti-discrimination Legislation*. 3rd Ed. London: Hurst and Company
- BROGNA, P. (2012) *Visiones y revisiones de la discapacidad*. México: Fondo de Cultura Económica.
- CAMPOY CERVERA, I. (2005) Una aproximación a las nuevas líneas de fundamentación de los derechos de las personas con discapacidad. *Revista Telemática de Filosofía del Derecho*. 8.
- CISTERNAS, M. S. (2012) Las obligaciones internacionales para los Estados Partes en virtud del artículo 12 de la CDPD, vínculos con el artículo 13 e impacto en el Derecho interno. In PALACIOS, A. & BARIFFI, F. (eds.) *Capacidad jurídica, discapacidad y derechos humanos*. Buenos Aires: Ediar.
- CAMPOY CERVERA, I. (2006) *La fundamentación de los derechos del niño: modelos de reconocimiento y protección*. Madrid: Dykinson.
- COURTIS, C. (2004) Discapacidad e inclusión social: retos teóricos y desafíos prácticos. Algunos comentarios a partir de la Ley 51/2003. *Jueces para la Democracia*. 51. p. 7.

- CUENCA GÓMEZ, P. (2010) *Estudios sobre el impacto de la Convención Internacional sobre los Derechos de las Personas con Discapacidad en el Ordenamiento Jurídico Español*. Madrid: Dykinson.
- CUENCA GOMEZ, P. (2011) Derechos humanos y modelos de tratamiento de la discapacidad. *Papeles El Tiempo de los Derechos*. 3. p.1-16.
- CUENCA GOMEZ, P. (2012) Sobre la inclusión de la discapacidad en la teoría de los derechos humanos. *Revista de Estudios Políticos*.158. p.103-137.
- CUENCA GÓMEZ, P. (2012) *Los derechos fundamentales de las personas con discapacidad. Un análisis a la luz de la Convención de la ONU*. Madrid: Universidad de Alcalá
- CUENCA GÓMEZ, P. (2012) *Estudios sobre los Derechos de las Personas Sordas*. Madrid: Dykinson.
- CUENCA GÓMEZ, P. (2014) Discapacidad, normalidad y derechos humanos. In BARRANCO AVILÉS, M.C. & CHURRUCA MUGURUZA, C. (eds.) *Vulnerabilidad y protección de los derechos humanos*. Valencia: Tirant Lo Blanch.
- DEGENER, T. & QUINN, G. (2000) A survey of international, comparative and regional Disability Law Reform. In BRESLIN, M.L & YEE, S. (eds.) *Disability Rights Law and Policy: International and National Perspectives*. New York: Transnational.
- DE ASIS ROIG, R. (2004) La incursión de la discapacidad en la teoría de los derechos: posibilidad, elección, Derecho y Poder. In CAMPOY CERVERA, I. (ed.) *Los derechos de las personas con discapacidad, perspectivas sociales, jurídicas y filosóficas*. Madrid: Dykinson
- DE ASIS ROIG, R. & PALACIOS, A. (2007) *Derechos Humanos y Situaciones de Dependencia*. Madrid: Dykinson.
- DE ASIS ROIG, R. (2011) Sobre el modelo social de la discapacidad: críticas y éxito. *Papeles el tiempo de los derechos*.1. p. 1-2.
- DE ASIS ROIG, R. (2013) *Sobre Discapacidad y Derechos*. Madrid: Dykinson.
- DE LORENZO GARCIA, R. (2003) *El futuro de las personas con discapacidad en el mundo. Desarrollo humano y Discapacidad*. Madrid: Ediciones del Umbral.
- GOLDSCHMIDT, W. (1976) *Introducción filosófica al Derecho*. 5th Ed. Buenos Aires: Depalma
- INGSTAND, B. and REYNOLDS WHITE, S. (1995) *Disability and Culture*.California: University of California Press
- LONGMORE, P. & UMANSKY, L. (2001)*The New Disability History. American Perspectives*. New York: New York University Press, New York.
- MARAÑA, J. & LOBATO, M. (2003) El movimiento de vida independiente en España. In VIDAL GARCÍA ALONSO, J. (ed.) *El movimiento de vida independiente*. Madrid: Fundación Luis Vives.
- MENTAL DISABILITY RIGHTS INTERNATIONAL & CENTRO DE ESTUDIOS LEGALES Y SOCIALES (2007) *Vidas arrasadas. La segregación de las personas en los asilos psiquiátricos argentinos. Un informe sobre derechos humanos y salud mental*. Washington DC: MDRI.
- MORRIS, J.(1996) *Encuentros con desconocidas. Feminismo y discapacidad*. Madrid: Narcea

- OLIVER, M. (1998) Una sociología de la discapacidad o una sociología discapacitada?. In Barton, L. (ed.) *Discapacidad y Sociedad*. Madrid: Morata S.L
- PALACIOS, A. & ROMANACH, J. (2007) *El modelo de la Diversidad*. Madrid: Diversitas.
- PALACIOS, A. (2008) *El modelo social de discapacidad: orígenes, caracterización y plasmación en la Convención Internacional sobre los Derechos de las Personas con Discapacidad*. Madrid: Cinca.
- PALACIOS, A. (2012) Igual reconocimiento como persona ante la ley y acceso efectivo a la justicia. In CERMI (ed.) *La transversalidad de género en las políticas públicas de discapacidad*. Madrid: Cinca
- PALACIOS, A. (2012) Reinterpretando la capacidad jurídica desde los derechos humanos. Una mirada desde la Convención Internacional sobre los Derechos de las Personas con Discapacidad. In PALACIOS, A. & BARIFFI, F. *Capacidad jurídica, discapacidad y derechos humanos. Una revisión desde la Convención Internacional sobre los Derechos de las Personas con Discapacidad*. Buenos Aires: Ediar
- PALACIOS, A. (2014) Personas con Discapacidad y Derechos Humanos. In PECES BARBA, G. *Historia de los Derechos Fundamentales, Siglo XX*. Part IV, Volume V, Book II. Madrid: Dykinson.
- PALACIOS, A. (2014) La discapacidad mental como cuestión de derechos humanos a la luz del desarrollo de nuestra jurisprudencia constitucional. In KEMELMAJER DE CARLUCCI, A., LLOVERAS, N., & HERRERA, M. (eds.) *Corte Suprema de Justicia de la Nación - Máximos Precedentes: Derecho de Familia*. Buenos aires: La Ley.
- PELAEZ NARVAEZ, A. & VILLARINO, P. (2012) *La transversalidad del género en las políticas públicas de discapacidad*. Madrid: Cinca.
- PUIG DE LA BELLACASA, R. (1993) *La Discapacidad y la Rehabilitación en Juan Luis Vives. Homo homini par*. Madrid: Real Patronato de Prevención y de Atención a Personas con Minusvalía.
- QUINN, G. (2006) *The UN Human Rights of Persons with Disabilities Treaty. A Blueprint for Disability Law & Policy Research and Reform*. Paper presented at the National Disability Authority Annual Research Conference, Dublin, November.
- QUINN, G. (2007) Disability Discrimination Law in the European Union. In MEENAN, H. (ed.) *Equality Law in an Enlarged European Union: Understanding the Article 13 Directives*. Cambridge: Cambridge University Press.
- ROSALES, P.O. (2013) Una mirada desde lo legal acerca de la discriminación por discapacidad, los estereotipos y la necesidad de toma de conciencia. Su tratamiento en la Convención sobre los Derechos de las Personas con Discapacidad. *Discapacidad, Justicia y Estado*. 2. p. 3-65.
- SCHEERENBERGER, R. C. (1984) *Historia del retraso mental*. San Sebastián: Servicio Internacional de Información sobre Subnormales.
- SERRA, M.L. (2014) Feminismo y discapacidad. *Derechos y Libertades*. 18(31).
- SILVERS, A., WASSERMAN, D. & MAHOWALD, M. B. (1998) *Disability, Difference, Discrimination. Perspective on Justice in Bioethics and Public Policy*. New York: Rowman & Littlefield Publishers Inc.
- STIKER, H. J. (1999) *A History of Disability*. Michigan: The University of Michigan Press.

UNITED NATIONS (2006) *Convention on the Rights of Persons with Disabilities*.
A/RES/61/106

WORLD HEALTH ORGANIZATION (2001) *International classification of functioning,
disability and health. ICF. Short version*. Ginebra: WHO

YOUNG I. M. (2000) *La justicia y la política de la diferencia*. Madrid: Cátedra.