



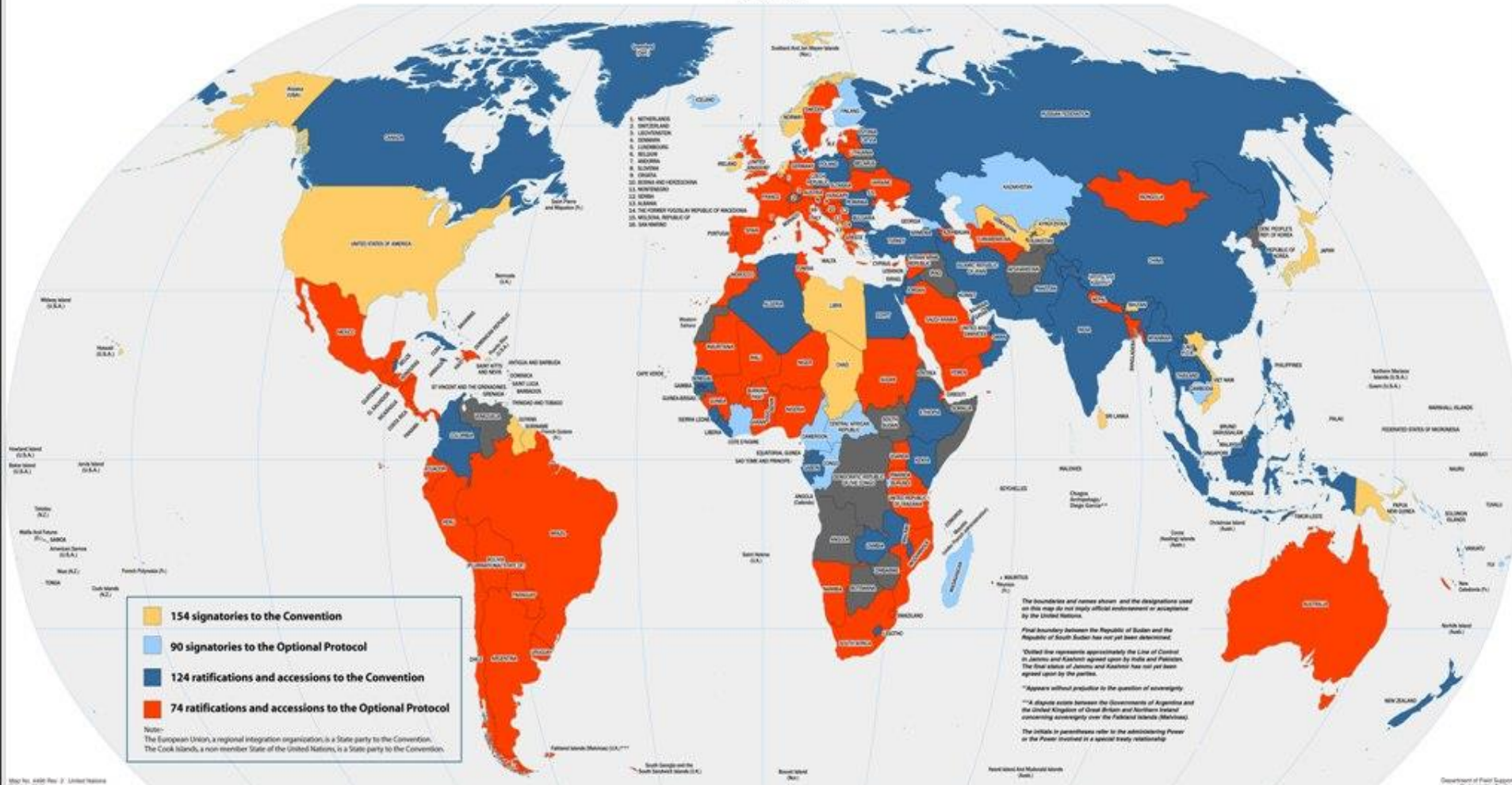
The UNCRPD as a signpost for legislators

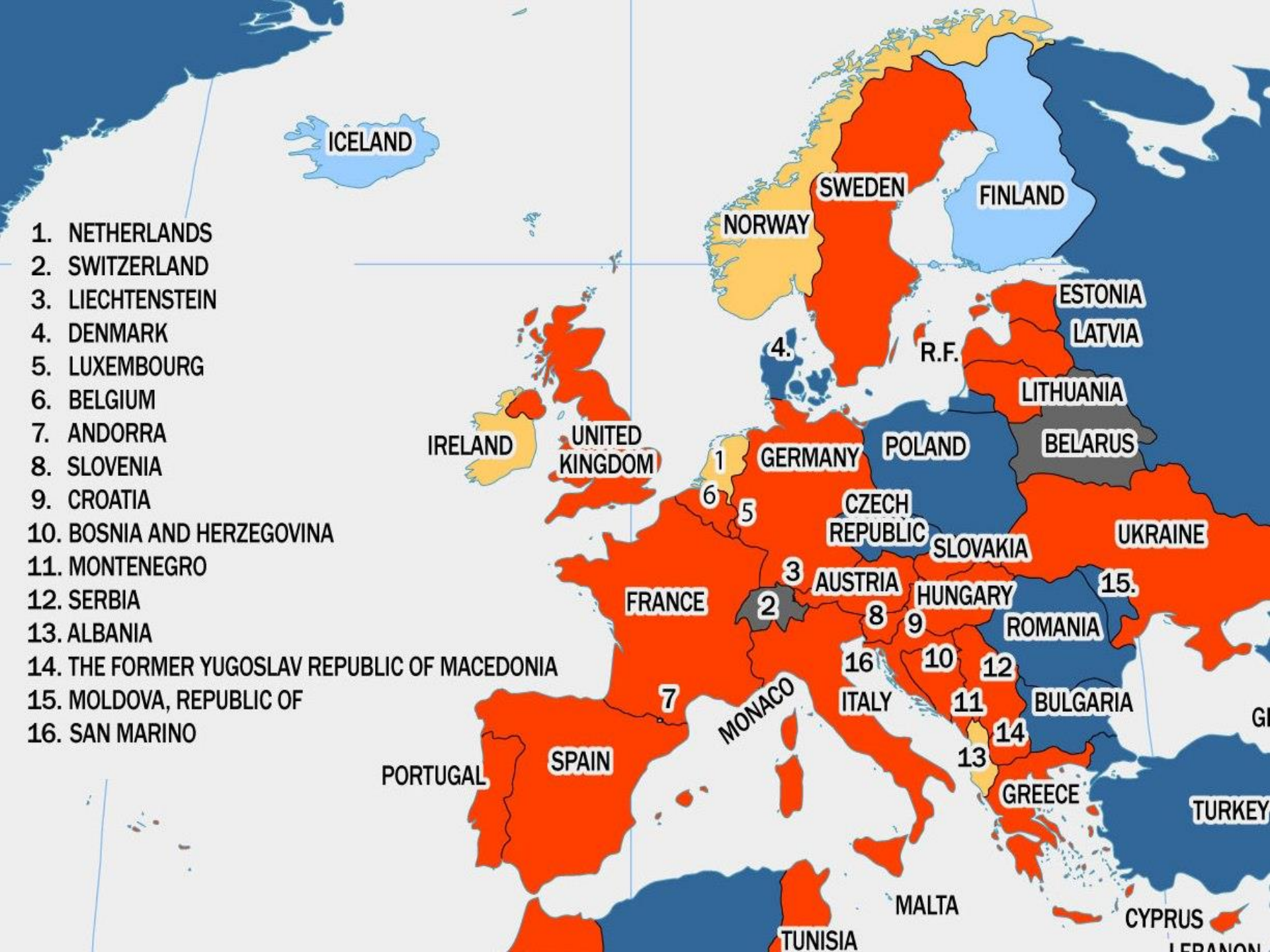
**Accounting for the general
principles and key
definitions in national
legislation.**

CRPD and Optional Protocol Signatures and Ratifications

Not Signed
 Signed Convention
 Signed Convention & Protocol
 Ratified Convention
 Ratified Convention & Protocol

As of 9 October 2012





ICELAND

SWEDEN

FINLAND

NORWAY

ESTONIA

LATVIA

LITHUANIA

BELARUS

POLAND

GERMANY

CZECH REPUBLIC

SLOVAKIA

UKRAINE

AUSTRIA

HUNGARY

ROMANIA

FRANCE

AUSTRIA

HUNGARY

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BULGARIA

ITALY

GREECE

TURKEY

MALTA

TUNISIA

CYPRUS

LEBANON

IRELAND

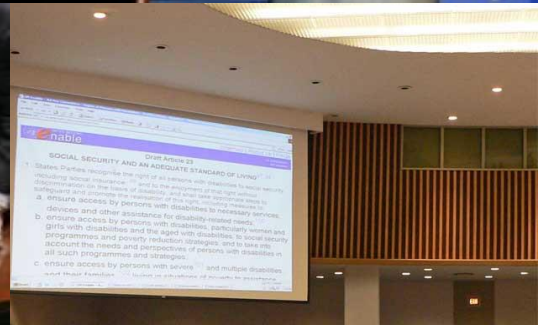
UNITED KINGDOM

PORTUGAL

SPAIN

MONACO

1. NETHERLANDS
2. SWITZERLAND
3. LIECHTENSTEIN
4. DENMARK
5. LUXEMBOURG
6. BELGIUM
7. ANDORRA
8. SLOVENIA
9. CROATIA
10. BOSNIA AND HERZEGOVINA
11. MONTENEGRO
12. SERBIA
13. ALBANIA
14. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA
15. MOLDOVA, REPUBLIC OF
16. SAN MARINO



“The Convention was the most rapidly negotiated human rights treaty in United Nations history, and it has received an overwhelming level of international support. But it always risked becoming the victim of its own success, with countries racing to become party, and then neglecting the hard work involved in national legislation and effective implementation. “



Don Mackay
Former Chair of the Negotiations
on the Convention on the Rights
of Persons with Disabilities
2012

We Can Do It!



MAY 1943



WAR PRODUCTION CO-ORDINATING COMMITTEE



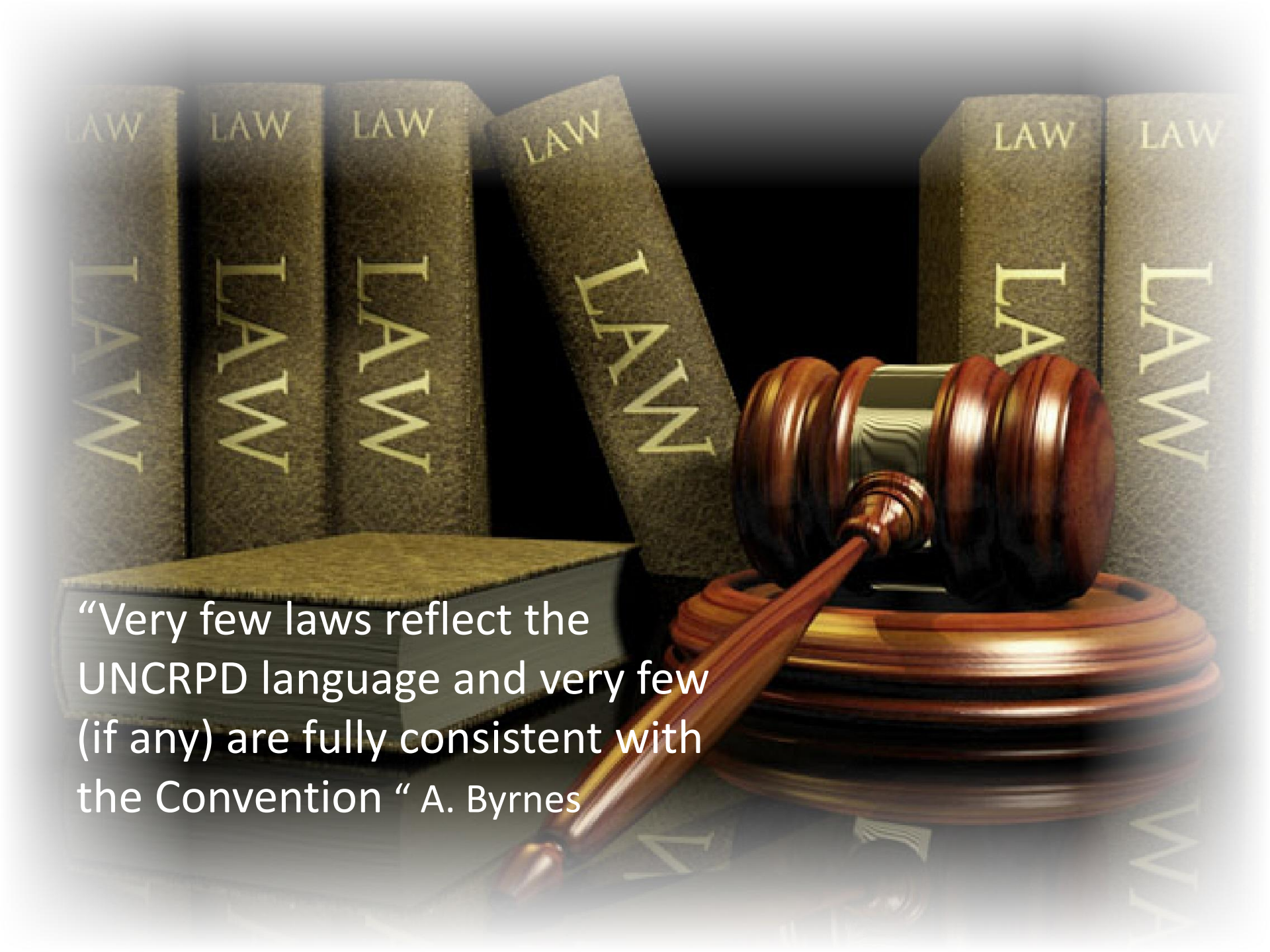
Article 4 - General obligations

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

- a) To adopt all appropriate **legislative, administrative and other measures** for the implementation of the rights recognized in the present Convention;*
- b) To take all appropriate measures, **including legislation, to modify or abolish existing laws, regulations, customs and practices** that constitute discrimination against persons with disabilities;*

Key Elements ?

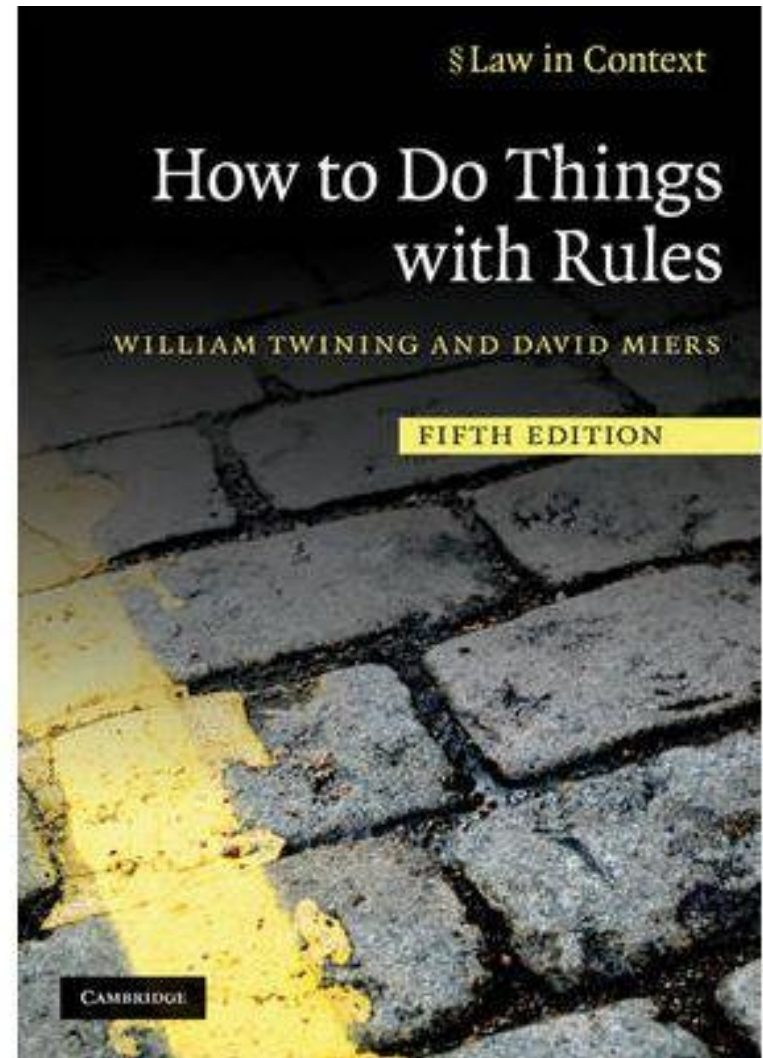
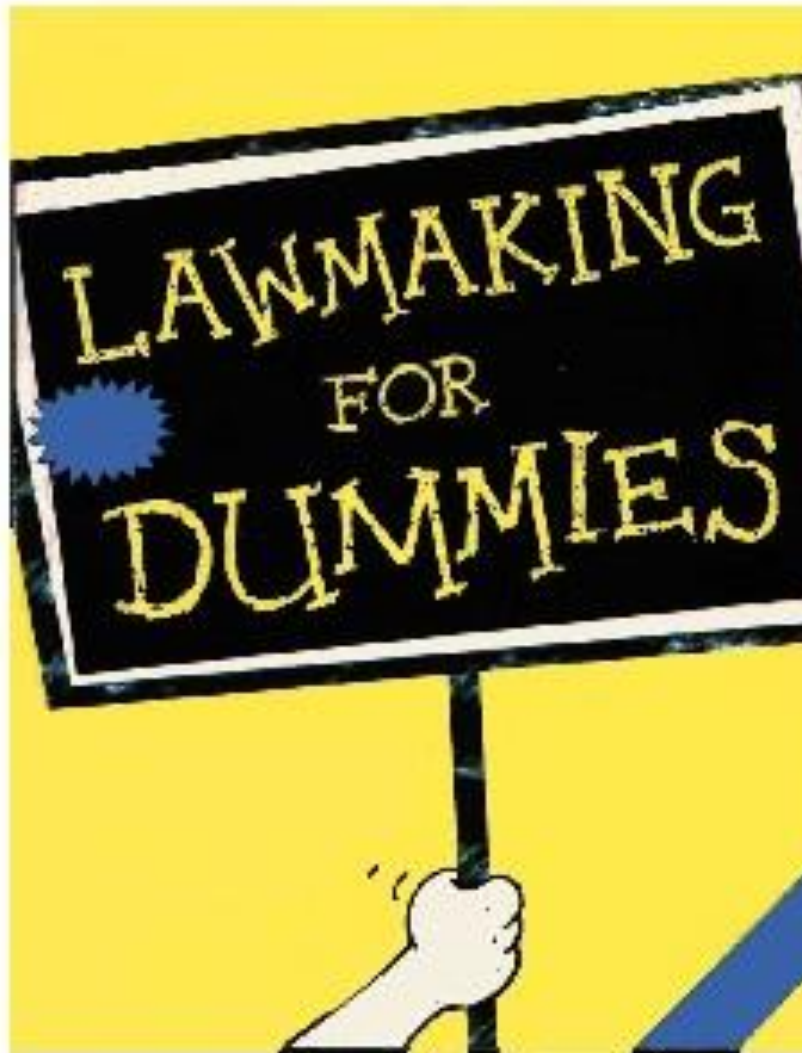



A collection of law books and a wooden gavel. The books are dark green with gold lettering that reads "LAW" on the spine. One book is lying flat in the foreground, while others are standing upright. A wooden gavel with a silver band is resting on a wooden block in the foreground. The scene is lit from the side, creating strong highlights and shadows.

“Very few laws reflect the UNCRPD language and very few (if any) are fully consistent with the Convention “ A. Byrnes



About Good Lawmaking Principles





The Golden Rule :

***Writing the law in
view of its
interpretation***

Any new law will be interpreted in a systemic way, that is taking into account the previously existent legislation. Therefore it has to be read in coherence with it, the meaning of the new law affecting the old one and vice versa.



A new meaning of disability ?



If we want derogate from the principles of the pre-existing legislation, we have to say **explicitly** that we are introducing a new legislation inspired by principles which are different from those of the existing legislation.





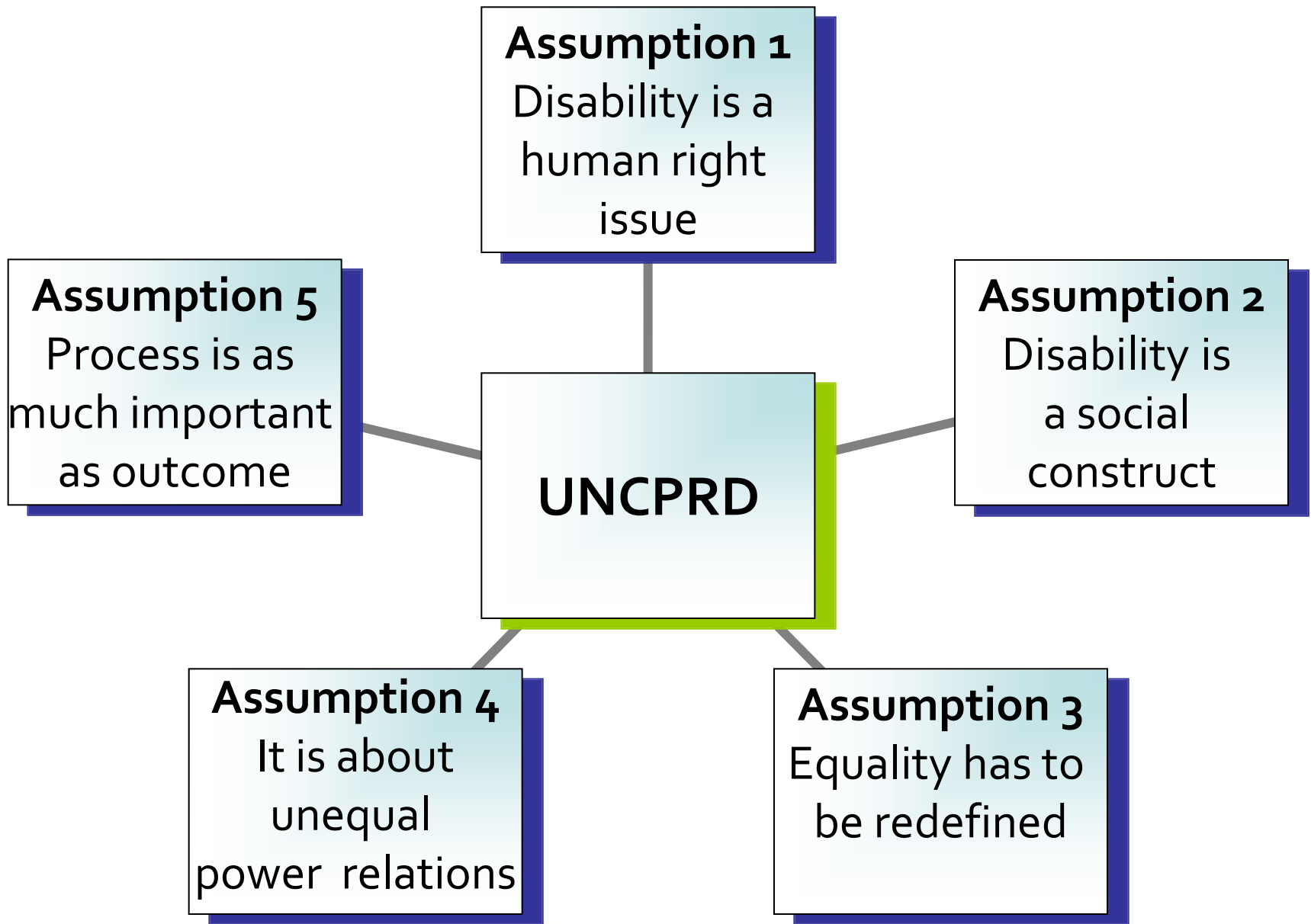
NEW



The United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol marks a "**paradigm shift**" in attitudes and approaches to persons with disabilities. It takes to a new height the movement from viewing persons with disabilities as "objects" of charity, medical treatment and social protection towards viewing persons with disabilities as "subjects" with rights, who are capable of claiming those rights and making decisions for their lives based on their free and informed consent as well as being active members of society.

WOW! - TALK
ABOUT A
PARADIGM SHIFT!







1. Disability is a human right issue

Needs vs Rights

- What is required/necessary/specific
- Needs are met or satisfied
- Needs do not necessarily imply duties
- Needs can be met by charity and benevolence
- Needs are often associated with non-legal commitment or promises
- Needs can be ranked a priori in a hierarchy
- What is inherent to every human being
- Human Rights are realized
- Human Rights always imply correlative duties
- Charity is seldom mandatory, rights always are
- Rights are always associated with legal obligations
- Rights cannot be ranked in a hierarchy

**Duty Bearer
Responsibility**

Has an obligation

Has a claim on

**Rights Holder
Participation**



Article 24 – Education

States parties shall ensure ...that persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live...

A right to inclusive education means that...



2. Disability is a social construct





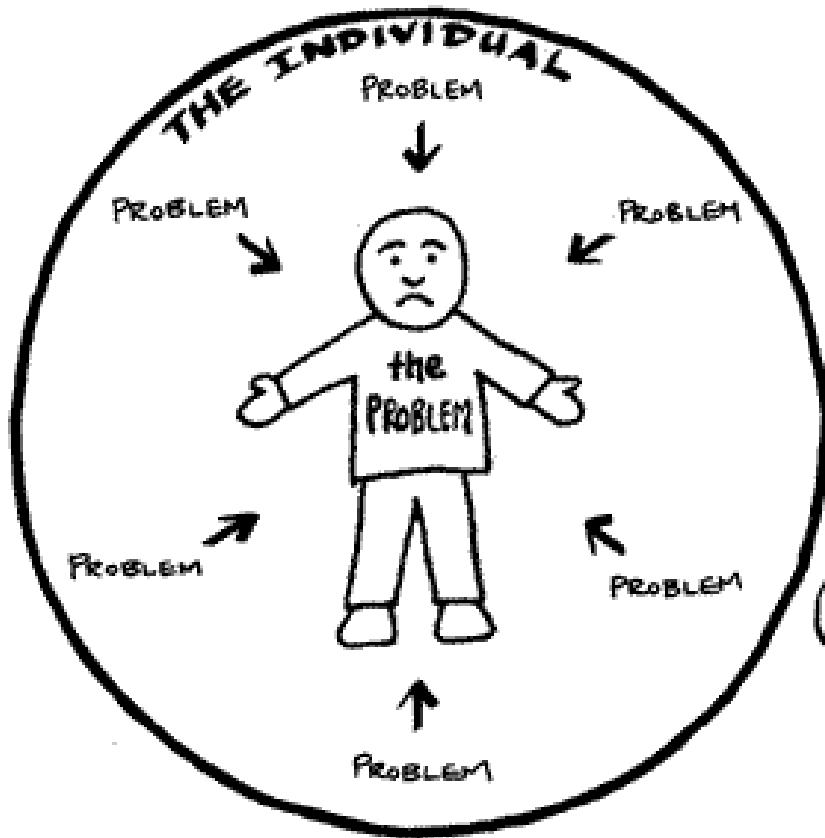
Preamble

Recognizing 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.

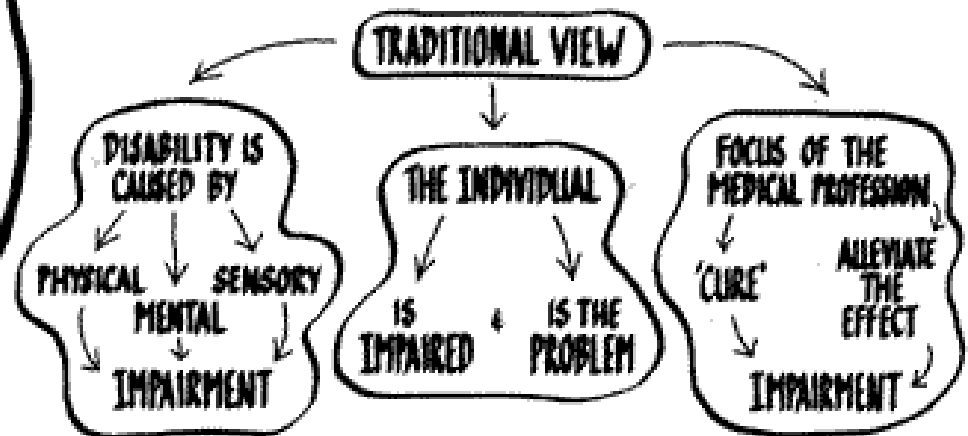
Article 1 – Purpose

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.

THE MEDICAL MODEL OF DISABILITY



IMPAIRMENTS AND CHRONIC ILLNESS
OFTEN POSE REAL DIFFICULTIES BUT
- THEY ARE NOT THE MAIN PROBLEMS





	English Poor Law (1601)	German Disability and Old Age Insurance Law (1889)	Canadian Employment Equity Act (1995)
Definition	The disabled includes “the sick, insane, defectives, aged and infirm”.	A person who “because of his physical or mental condition is neither in a position to perform regularly his previous work, nor to earn the minimum invalidity pension though other work corresponding to his strengths and abilities”.	A person with an impairment who considers himself to be disadvantaged in employment by reason of that impairment or believes that an employer is likely to consider him to be disadvantaged in employment by reason of that impairment.
Purpose	Providing a license to beg	Providing an income support	Providing equal employment opportunities

**Antidiscrimination
legislation**

**Social security
legislation**

Labour law

Social care

War veteran's law

Capacity law





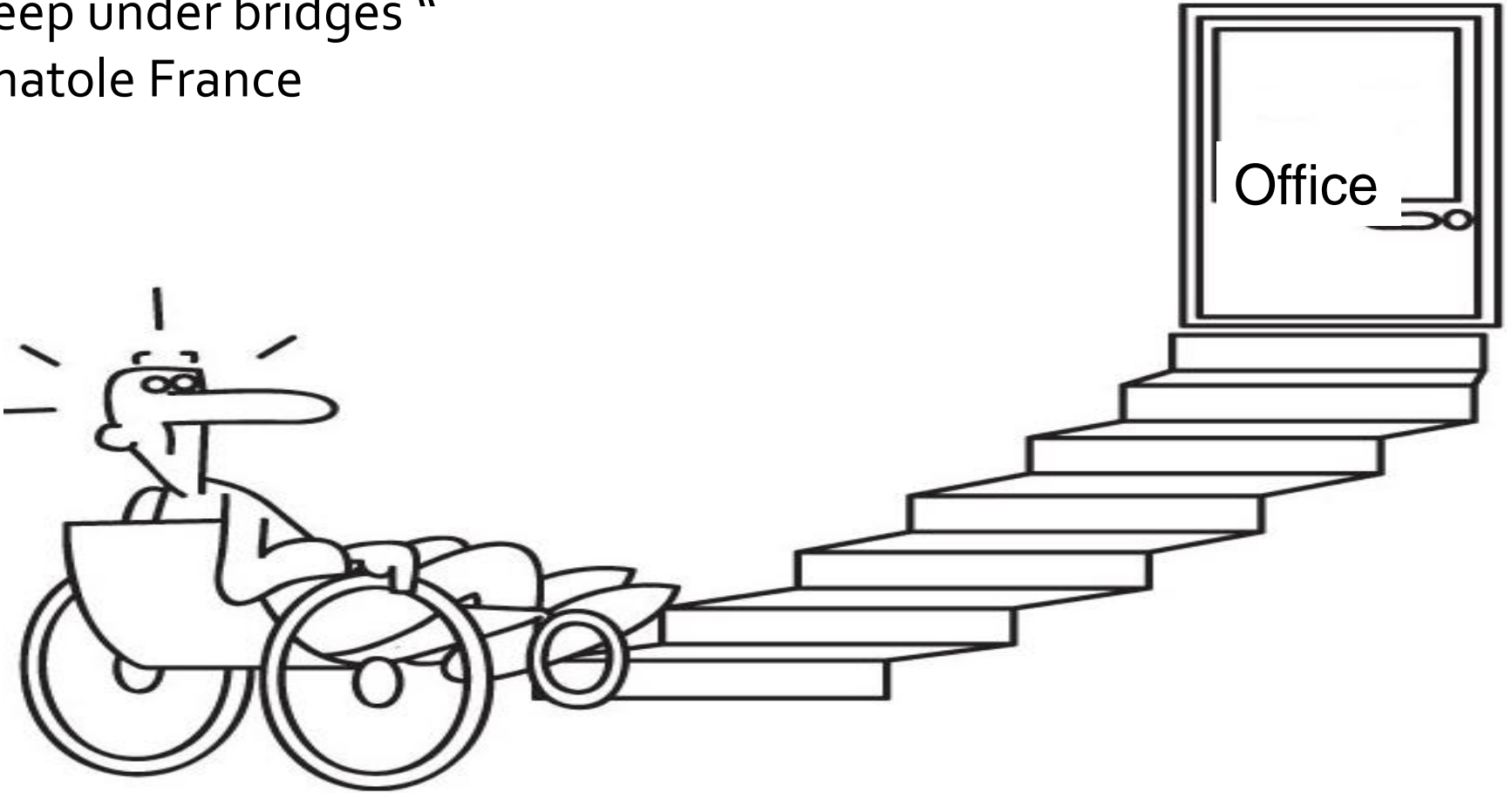
**Take
home message*

- When discussing issues implying paradigms shifts :
 - ✓ Know your paradigm.
 - ✓ Remember that understanding a competing paradigm is not the same as accepting it.
 - ✓ Own your paradigm. Don't let your paradigm own you.



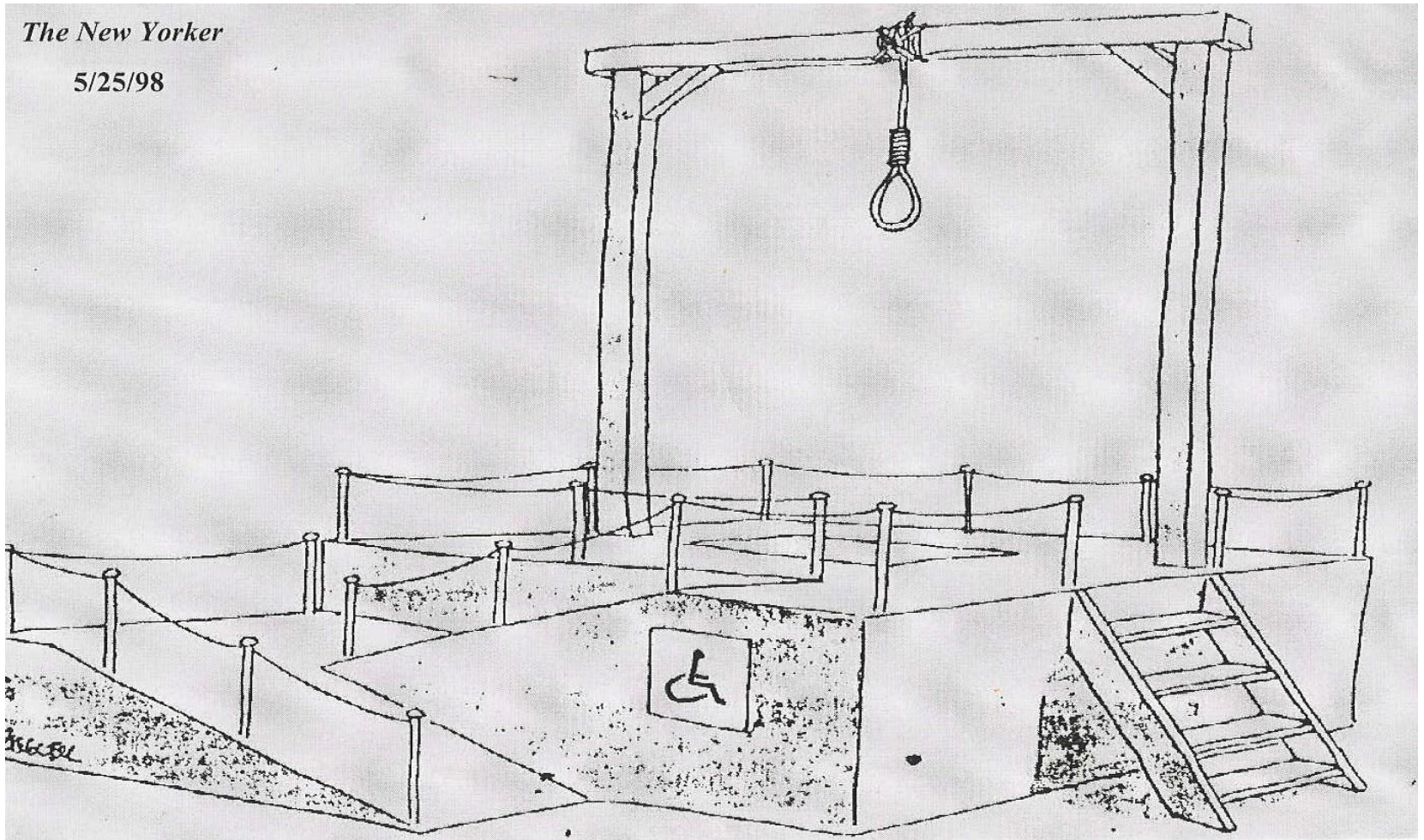
3. Equality has to be redefined

"The law, in its majestic equality,
forbids the rich and the poor alike to
sleep under bridges "
Anatole France



The New Yorker

5/25/98

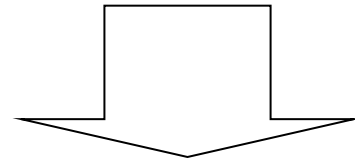


Article 5 . In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, **reasonable accommodation** shall be provided.

Article 12 - Equal recognition before the law

States Parties shall recognize that persons with disabilities **enjoy legal capacity on an equal basis with others in all aspects of life.**

States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.



Equality also requires a proactive approach

Article 9 – Accessibility

To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, **on an equal basis with others**, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas



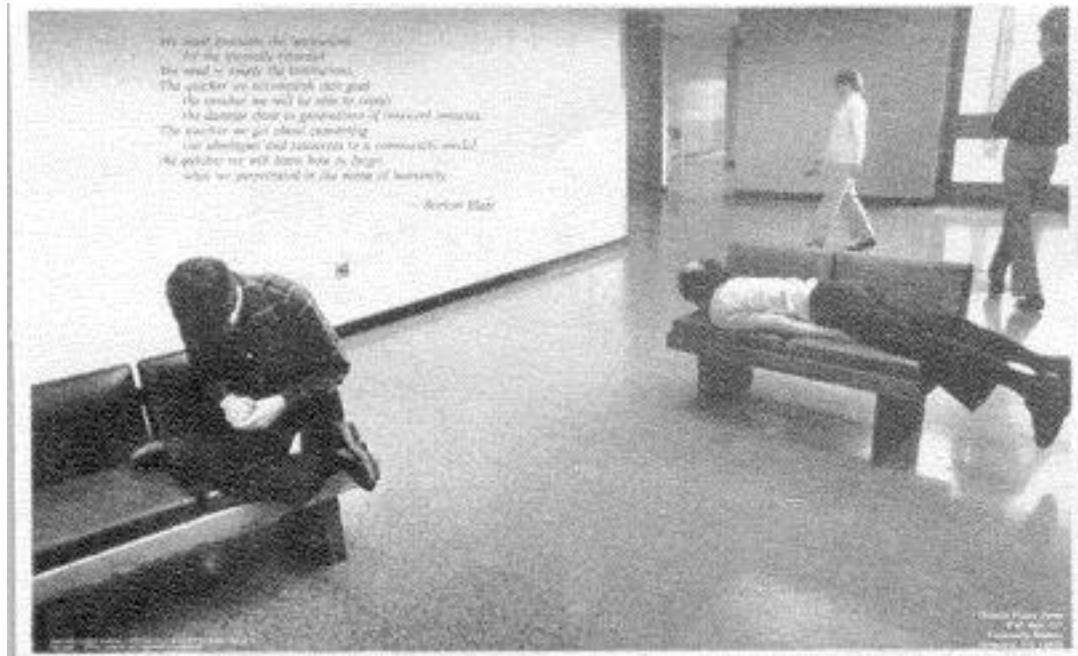
Article 19 - Living independently and being included in the community

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.



4. Unequal power relations lies at the cause of the exclusion of persons with disabilities





The common elements that underlie persons with disabilities people's exclusion are voicelessness and powerlessness. Confronted with unequal power relations, people with disabilities are unable to influence or negotiate better terms for themselves with governments, service providers and civil society. Dependent on others for their welfare, they also frequently find it impossible to prevent violations of dignity and respect.

The UNCPRD as an agenda for empowerment



Inclusion
and
Participation

Organizational
capacity

Access to
information

Accountability

5. Process is as much important as outcomes



PROCESSES

IS UNOVERR

IMPORANT

WHEN THE
OUTCOME DRIVES
THE PROCESS
WE WILL ONLY
GO TO WHERE
WE'VE ALREADY

BEEN
IF PROCESS
DRIVES THE
OUTCOME
WE MAY NOT
KNOW

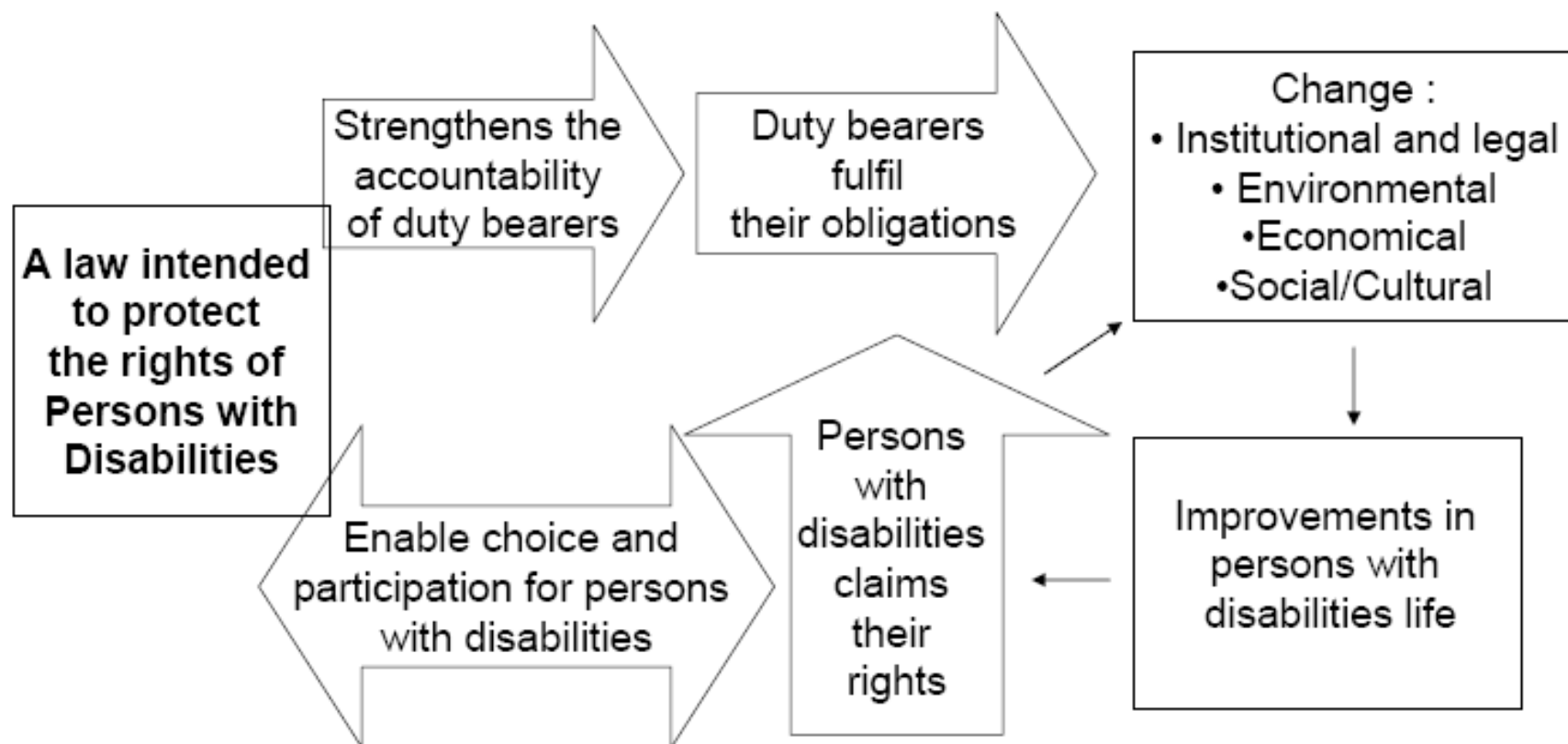
WHERE WE'RE
GOING, BUT
WE WILL
KNOW WE
WANT TO BE
THERE.

CHAIN

OUTCOME

FROM
The American
Manifesto
to
Growth
BY
Bruce Mau

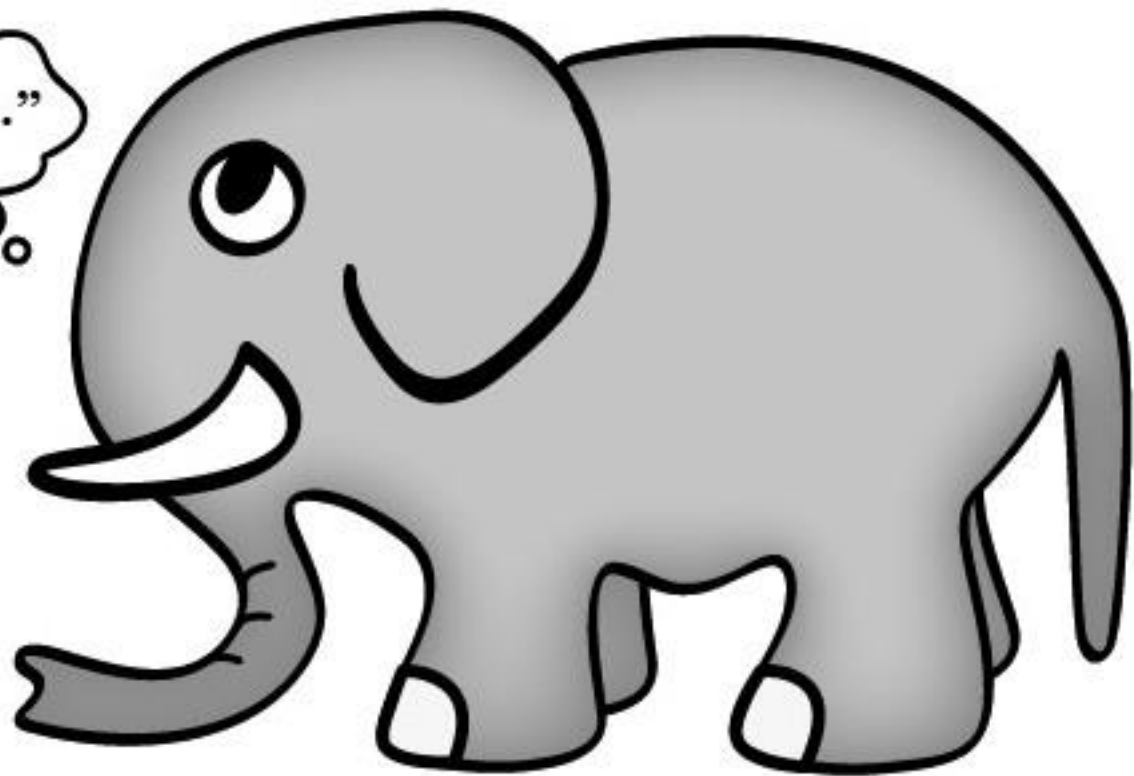
A PROCESS-BASED GUIDEPOST FOR POLICYMAKERS AND LEGISLATORS



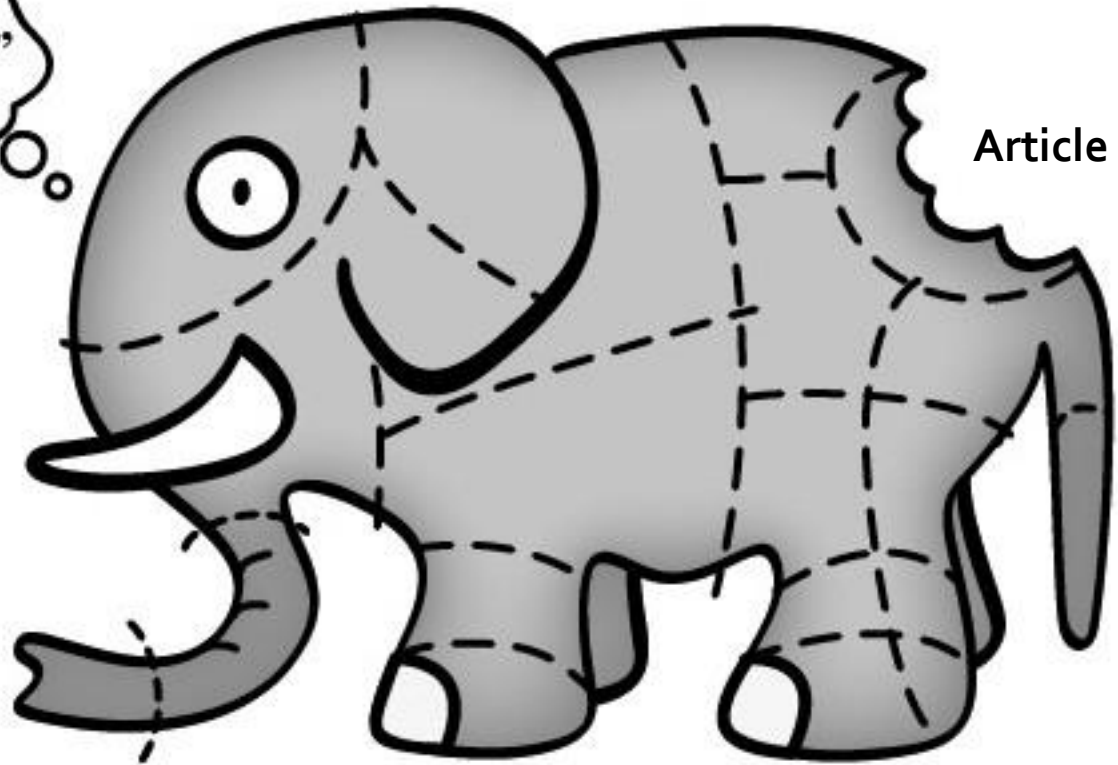
One more thing...

How to Eat an Elephant?

“In your dreams...”



“That one hurts!”



Article 33

One bite at a time.