

EDITORIAL

The articles in this issue of the International Journal of Mental Health and Capacity Law continues our aim of highlighting the interplay between law, mental health and mental capacity in a variety of settings, both in terms of topics and jurisdictions of focus. Each of them also brings value beyond their immediate focus.

In the opening article, Professor Nicola Glover-Thomas discusses the potential role of therapeutic jurisprudence in securing better outcomes for older adults whose cognitive decline poses questions about capacity to manage financial affairs and which also implicates personal autonomy and well-being. Whilst this has a focus on the regulation of capacity in England and Wales, it looks at the broader implications of this, including well-being, and introduces the framework of therapeutic jurisprudence – the idea that, as interactions with legal processes have impacts on people, care should be taken in the design of those processes. Naturally, the aim of this consideration should be to seek a therapeutic/positive impact.

The next article, by Hannah Quadrio, takes us to the Northern Territory of Australia and investigates the value of providing a definition of capacity when that is used in mental health law, based on data from a small research study and placed in the context of a review of the legislative framework there. As part of this, she provides a useful summary of recent legislative developments in Australia, setting out the approach that has been taken to capacity in those changes.

We then move into the criminal jurisdiction and to Ireland for Luke Noonan's analysis of what the Convention on the Rights of Persons with Disabilities (CRPD) requires in relation to fitness to stand trial and how Irish law should be amended to be compliant with the requirements of the Convention. This provides guidance that can be used in other jurisdictions, given that the Committee on the Rights of Persons with Disabilities has been clear in its view that such processes are problematic. On this see, *Noble v Australia*,² which Noonan discusses; another example is *Medina Vela v Mexico*,³ showing that this is not limited to common law jurisdictions.

There is a link between the three articles in that capacity features, and all three articles contain discussions of the CRPD and one of its central propositions, namely that limitations on capacity as a medical matter should not lead to loss of capacity as a legal matter, namely the right to make decisions about matters that affect the person. Rather, limitations in the former capacity should lead to support to allow the latter capacity to be exercised. See in particular Article 12 of the CRPD; in the context of court processes, Article 13 is also relevant, setting out the need for "procedural and age-appropriate accommodations" to allow participation.

² *Marlon James Noble v Australia* CRPD Committee, Communication No 7/2012, 10 October 2016, [2017] MHLR 215.

³ *Arturo Medina Vela v Mexico* CRPD Committee, CRPD/C/22/D/32/2015, 15 October 2019, [2024] MHLR 176.



As always, I'd like to express my thanks to authors who submit their articles and those who provide assistance to keep this journal as a wholly open access publication, including peer reviewers and the great supporting team at the University of Northumbria. The commitment of the University to open access journals, importantly produced without article processing charges, is very welcome. One of the great benefits of the digital age should be the ability to access academic work from anywhere: but so many journals are behind expensive paywalls or, if not, have a model of charging authors significant sums in the form of Article Processing Charges to publish work in an open access format. Academic authors, perhaps particularly those working in public institutions or in private institutions which secure subsidies through charitable status, should consider whether direct or indirect public funding for their work should support a preference to publish in a way that allows full public access to their research.

Whatever the motivation of authors, the editorial team welcome contributions from all perspectives, whether in the form of research articles, notes about developments in statutes, policies or jurisprudence, accounts of research in progress, reviews of books, or any other output that might be of interest to readers.

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