



Global perspectives on legal capacity reform: our voices, our stories

edited by Eilionóir Flynn, Anna Arstein-Kerslake, Clióna de Bhailís, and Maria Laura Serra, Abingdon, Routledge, 2019, 218 pp., £96.00 (hardback), ISBN 978-1-13-829891-0

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BOOK REVIEWS

Global perspectives on legal capacity reform: our voices, our stories, edited by Eilionóir Flynn, Anna Arstein-Kerslake, Clíona de Bhailís, and Maria Laura Serra, Abingdon, Routledge, 2019, 218 pp., £96.00 (hardback), ISBN 978-1-13-829891-0

This edited collection is the culmination of the 'VOICES' (Voices of Individuals Collectively Exploring Self-Determination) project, a three-year undertaking led by Professor Eilionóir Flynn of the Centre for Disability Law and Policy (NUI, Galway, Ireland) that explored and sought to change the law regarding legal capacity, and the right to equal recognition before the law, for people with disabilities (broadly defined as the right to make decisions with legal consequences, and to have these decisions respected in law; as enshrined in Article 12 of the United Nations Convention on the Rights of Persons with Disabilities [UNCRPD]). With a theoretical framework centred on two fundamental challenges in this contentious area of law – the historical exclusion of disabled people from the drafting of legal capacity legislation; and tensions around the definition and implementation of legal capacity, and the right to equal recognition before the law (Dejener 2017, 2) – the project explored foundational questions concerning the constitution and limitation of legal agency in the context of a politics of disability rights (2017, 4).

This edited collection presents discussion that engages these questions across four socio-legal domains: criminal responsibility; contracts; consent to sex and relationships; and consent to medical treatment. It does this in a novel and dynamic way, by setting out a series of dialogues between 14 disabled people with direct lived experience of social issues around legal capacity, each of whom was paired with a respondent (a person with a background in research, policy-making, law and/or activism) who comments on the socio-legal context in which such experiences are situated.

Global Perspectives on Legal Capacity Reform presents a grounded analysis of the socio-legal landscape concerning the construction of legal capacity and the right to equality before the law at national level globally, and the impact of Article 12 UNCRPD at what is clearly a time of significant global evolution in this area of law. As such, the shadow of the impact on the lives of disabled people of archaic, paternalistic legislation such as the Irish Marriage of Lunatics Act of 1811 and the Lunacy Regulation (Ireland) Act 1871 is shown to be in the process of being subverted by newly implemented national legal frameworks, such as the Assisted Decision-Making (Capacity) Act 2015 (Ireland) and the Mental Capacity Act 2005 (England and Wales), in addition to, and driven by, the overarching international paradigm shift initiated by the UNCRPD. The tensions around such a legislative and social disruption are also revealed and addressed transparently and authentically.

Alongside rigorous analysis of relevant legal and policy frameworks, a key strength of the book is the way it addresses the impact (or lack of impact) of law in the everyday lives of disabled people, and those whose legal capacity is challenged. In addition to the overall theoretical framework of the VOICES project, each of the contributions to the edited collection draws upon and contributes to a broad range of relevant areas of knowledge. For example, Chapter 16 'My Sister is Married. Why

Can't I Get Married?' by Maria Mahony and Sarah Richardson (117–132) engages with the capabilities approach (Nussbaum 2001) to explore the responsibilities of the State to provide support to people with intellectual disabilities for decision-making. Similarly, classic sociological theory on stigma (Goffman 1967) is invoked to contextualize the struggle experienced by contributor Ronnie Harris in persuading his family that he was capable of going on holiday with his partner (141).

The chapter by Ronnie Harris and Jana Offergeld, 'Dreaming of Travelling – Dreaming of Freedom' (131–144), is also notable, as it highlights another key theme of the book: the limitation of the law in addressing and dismantling social oppression, and the consequent need for a broad range of further socio-legal strategies upon which to draw in the pursuit of social change and equality. Within the chapter, it is made clear that unlike other contributors to the book, Ronnie is not subject to legal mechanisms limiting or extinguishing his legal capacity, such as plenary guardianship or wardship (cf. Claire Hendrick in Chapter 9 'Silenced, Alone, Powerless: My Life as a Ward of Court in Ireland' [61–70]). The barrier he faces is a social and attitudinal one, rooted in the prejudices and assumptions of his siblings who have assumed control of his finances. It is argued that the routes to dismantling such 'informal' forms of disability oppression may lie not in legal redress, but in social support and advocacy. In this way, the book speaks to long-established central concerns of socio-legal scholarship around the scope of law and its role in everyday life, as a driver of social change, and broadens such concerns to embrace a context central to disability politics (see further Cotterrell 1979; Smart, 1989; Ewick and Silbey 1998).

Involving contributions from a wide geographical area (13 countries), along with a broad representation of disciplines including law, sociology, disability studies and history, *Global Perspectives on Legal Capacity Reform* is likely to be of interest to a significant cross-section of disabled people, activists, researchers, academics, lawyers and policy-makers who wish to know not only about access to legal capacity and equal recognition before the law as substantive rights enshrined in Article 12 UNCRPD, but also more broadly about how disabled people might engage with, harness, utilize and change the law in the pursuit of, and the protection of, our human rights.

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