# International Journal of Law in Context

A Global Forum for Interdisciplinary Legal Studies

Special Issue: Mental capacity and value neutrality Guest Editor: Jillian Craigie



## International Journal of Law in Context

#### **Incoming Editors-in-Chief**

Professor Penelope Andrews Albany Law School, 80 New Scotland Avenue, Albany, NY 12208, USA Email pandr@albanylaw.edu

#### Professor Marc Hertogh

University of Groningen, Faculty of Law, Department of Legal Theory, PO Box 716, 9700 AS Groningen, The Netherlands Email M.L.M.Hertogh@rug.nl

Professor Jane Holder

Faculty of Laws, University College London, Bentham House, 4-8 Endsleigh Gardens, London WC1H OEG, UK Email jane.holder@ucl.ac.uk

#### **Outgoing Editors-in-Chief**

Professor Michael Freeman F.B.A.

Faculty of Laws, University College London, Bentham House, Endsleigh Gardens, London, WC1H oEG UK Email uctlmdf@ucl.ac.uk

#### Professor Carrie Menkel-Meadow

Georgetown University, Law Center, 600 New Jersey Avenue, N.W., Washington DC 20001, USA, University of California, Irvine Law School, USA and Center for Transnational Legal Studies, 37-39 High Holborn, London, WC1V 6AA UK Email meadow@law.georgetown.edu

#### Editor-in-Chief - Law in other contexts

Professor David Nelken

University of Macerata, Via Audinot 35, Bologna 40134, Italy and Cardiff Law School, Cardiff University, Museum Avenue, Cardiff, CF10 3AX UK

#### **Reviews** Editor

#### Helen Reece

Department of Law, London School of Economics, Houghton Street, London, WC2A 2AE UK Email h.reece@lse.ac.uk

#### **International Editorial Board**

Professor Gad Barzilai, University of Haifa, Israel and University of Washington, USA

Professor Dr Franz von Benda-Beckmann, Max-Planck-Institut für ethnologische Forschung, Germany

Professor Belinda Bennett, University of Sydney, Australia Professor Susan Boyd, University of British Columbia, Canada Professor Anne Cheung, The University of Hong Kong,

Hong Kong

Professor Davina Cooper, University of Kent, UK

Professor Roger Cotterrell, Queen Mary, University of London, UK

Professor Javier A. Couso, Universidad Diego Portales, Chile

- Professor Alison Diduck, University College London, UK
- Dr Seán Donlan, University of Limerick, Ireland Professor Eric A. Feldman, University of
- Pennsylvania, USA Professor Lawrence M. Friedman, Stanford University, USA
- Professor Judy Fudge, University of Victoria, Canada
- Dr Elaine Genders, University College London, UK
- Professor Patrick Glenn, McGill University, Montreal, Canada
- Professor Peter Goodrich, Cardozo School of Law, USA
- Dr David Gurnham, University of Southampton, UK Professor John Harris, University of Manchester, UK Mavis Maclean, University of Oxford, UK
- Mark Fathi Massoud, University of California Santa Cruz, USA
- Professor Christopher McCrudden, University of Oxford, UK
- Professor Naomi Mezey, Georgetown University, USA Professor Rizwaan Mokal, University College
- London, UK
- Daniel Monk, Birkbeck, University of London, UK Professor Bronwen Morgan, University of New South
- Wales, Australia and University of Bristol, UK Colm O'Cinneide, University College London, UK
- Professor Amanda Perry-Kessaris, School of Oriental and African Studies, University of London, UK
- Professor Robert Rosen, University of Miami, USA Professor Edward Rubin, Vanderbilt University, USA
- Professor Philippe Sands Q.C., University College London, UK
- Dr Igor Stramignoni, London School Economics and Political Science, UK
- Professor William Twining, University College London, UK
- Professor Markus Wagner, University of Miami School of Law, USA
- Professor Melanie L. Williams, University of Exeter School of Law, UK

### Contents

#### Special Issue: Mental capacity and value neutrality

	Articles
1-3	Introduction: mental capacity and value neutrality Jillian Craigie
4–19	Capacity, value neutrality and the ability to consider the future <i>Jillian Craigie</i>
20–36	Agency, ambivalence and authenticity: the many ways in which anorexia nervosa can affect autonomy <i>Tony Hope, Jacinta Tan, Anne Stewart and John McMillan</i>
37-52	Autonomy, vulnerability and capacity: a philosophical appraisal of the Mental Capacity Act <i>Catriona Mackenzie and Wendy Rogers</i>
53–70	Hidden substance: mental disorder as a challenge to normatively neutral accounts of autonomy Fabian Freyenhagen and Tom O'Shea
71–86	Can procedural and substantive elements of decision-making be reconciled in assessments of mental capacity? <i>Natalie F. Banner</i>
87-105	Mental capacity in the shadow of suicide: What can the law do? <i>Genevra Richardson</i>
	Review essay
106–123	The roots of transitional accountability: interrogating the 'justice cascade' <i>Padraig McAuliffe</i>
	Book reviews
124–126	Euthanasia and Law in Europe Harry East
126–130	Agriculture and EU Environmental Law Fiona Smith
130–134	Law and Anthropology: Current Legal Issues, volume 12 Fauzia Shariff