



Editorial

Older adult mental health law special issue, International Journal of Law and Psychiatry



People across the world are living longer. Most people can expect to live into their sixties and in some countries into their seventies, eighties, and beyond (geobase.se, 2018). Between 2015 and 2030, according to United Nations projections, the number of people aged 60 years and over will grow from 901 million to 1.4 billion, and by 2050 to nearly 2.1 billion (United Nations, 2015). In part this results from a decrease in child mortality; there is a larger cohort of younger people who are growing into older age (World Health Organisation, 2015). Although often referred to as a problem, the fact that we live longer is something we should celebrate (Kirkwood, 2001). However, the growth of the number of older people and in many countries the contrasting drop in the number of young people presents challenges to the global community. Older age may bring it with it a decline in physical and mental health, although this is not inevitable (Prince et al., 2015). There are also social and familial implications (Tinker, 2002).

Responding to the challenge of an ageing population requires national and international action. Prince points out that the number of people living with dementia, worldwide, is set to double every twenty years. Across the world there were 44.4 million people with dementia in 2013; it is anticipated that this will rise to 75.6 million in 2030 and 135.5 million in 2050 (Prince, 2018). The mental health of older people is affected by isolation, poverty, ageism, and abuse and neglect (Smith and Victor, 2018; Yunus, Hairi, & Choo, 2019). The Convention on the Rights of Persons with Disabilities (CRPD) was a significant development in the international human rights framework. As the CRPD applies broadly to people of all ages, some older people will fall within its provisions, particularly because the meaning of persons with disabilities includes those with long-term mental and intellectual impairments (Szmukler, Daw, & Callard, 2014). Work is also underway at the United Nations on a convention on the rights of older people; the UN Open-ended Working Group on Ageing is now in its tenth year of work on a convention; whether a convention will materialise and, if so, what its shape and content might be is a matter of speculation (Doron & Apter, 2010; United Nations, 2019; Williams, 2011).

The collection of articles in this Special Issue focuses on older people and their mental health and well-being. The articles reflect the extent to which the rights of older people have entered academic and practitioner debate across several different disciplines. The previous invisibility of older people in the human rights discourse is now being addressed by practitioners and researchers and the importance of discussing the older person's experience is increasingly recognised (Arber & Ginn, 1991).

In this Special Issue, Hall critiques the existing approach to dementia and older age and proposes a new legal response which is centred around a principled theory of vulnerability rather than the current mental capacity construct. The impact of the CRPD is discussed. She argues that the bio-medical discourse surrounding dementia is no

longer sustainable. A social rather than a medical approach to dementia in older age is advocated, which will involve a legal component. An approach that requires responding to vulnerability as a principled basis for a legal intervention is proposed and this, she argues, acknowledges the importance of autonomy and fairness as component parts of dignity.

Pritchard-Jones also discusses the CRPD. She addresses the potential benefits of the Convention, whilst at the same time highlighting some of the problems that arise in relation to people living with dementia. Of particular interest is the working of Article 12 of the CRPD which contains the rights to equal recognition before the law and to be supported in decision making. She identifies a much-needed recent shift in research which addresses the relationship between this article and particular forms of disability. People living with disability are not a homogenous group. Her analysis of the CRPD and the General Comment No. 1, whilst recognising the value of the Convention, leads her to conclude that the rights of people living with dementia to supported decision making under the CRPD may perversely be discriminatory towards them. There is a failure to address some of the fundamental ethical problems, such as what is meant by support. The idea of good supported decision making must move from rhetoric to reality – in doing so we cannot ignore the fact that a person has dementia.

Donnelly too discusses the potential and the limitations of supported decision making under the CRPD. Like Pritchard-Jones, she considers supported decision making through the lens of people living with dementia. Countries have adopted different ways of putting the principle into a legal context. Donnelly discusses the British Columbia Representation Agreement Act 2000 and the Assisted Decision-Making (Capacity) Act 2015 in Ireland. She identifies the many difficulties in establishing a legal framework that makes sense of the right to supported decision making. Both pieces of legislation encounter difficulties either by failing to provide effective oversight of the procedures (British Columbia) or by reason of the complexity of the legislation (Ireland). She concludes that the law will catch up, but it will take time. However, progress must be made to enable people living with dementia to maintain some control of their lives for as long as is possible.

Kelly et al. highlight fact that the relationship between age and mental capacity among psychiatry inpatients in Ireland is not fully understood. Using the MacArthur Competence Assessment Tool for Treatment (MacCAT-T), they assessed 215 psychiatry inpatients in four units in Ireland. They conclude that more targeted interventions are needed for those patients who may be in most need of support – including involuntary inpatients, the unemployed and those with schizophrenia and, albeit to a lesser extent, older people. There is a need for further research to take forward the findings of the study in relation to the significant factors identified and the cognitive status of patients.

Purser and Lonie discuss the subject of testamentary capacity and

dementia. They identify a failure to address the way in which cognitive impairment impacts on the four prongs laid down by the 1870 case of *Banks v Goodfellow*. The importance of memory and executive function appear to dominate existing literature at the expense of other areas of cognitive function. Existing models for evaluating testamentary capacity do not provide any guidance on assessing cognitive function. Additional domains of cognitive function should be explored and the authors identify the need for further research in order to rectify the 'current unsatisfactory and unreliable assessment' approaches.

For older people and others who live with a mental disorder, there is a risk that they will experience coercion in their care and treatment. Ulya et al. discuss the situation in Indonesia where the concept of coercion or *pasung* has been the subject of debate and legislative action. They discuss this from the perspectives of bioethics, health law and mental health. In their discussion they consider the role of families and the communities in supporting people with mental disorders as well as the legal and ethical framework. They conclude that despite legislative initiatives banning *pasung* there is a lack of an integrated response, particularly as Indonesia moves towards de-institutionalising care and treatment. Coercion is harmful and a potential violation of human rights and must be replaced by a supportive environment.

Bennett discusses the current and potential use of technology to assist people living with disabilities. An ageing population means that technology is more often considered as an option to support older people and maybe help them to remain in their own homes. The article considers technology's role in promoting everyday living, greater mobility, and social engagement for older people. This is set against the background of diminishing availability of state resources to support people as they grow older. Technology can play a part in supporting older people. However, it must be considered within a human rights context. Among the key issues to be addressed are who decides on its use; how can dignity, liberty and privacy be protected; whether it supports mobility, companionship and social engagement; and whether it is accessible on an equal basis. These are challenging questions that need to be addressed before seeing technology as some kind of panacea.

The reform of the mental legislation in England and Wales is underway. Ogunwale highlights the inadequacies of the current range of provisions relating to mental health and capacity, in particular the Mental Health Act 1983, the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards which were added to the 2005 Act by the Mental Health Act 2007. He is critical of the extent to which this legislative framework actually protects human rights and achieves the necessary balance between patient autonomy and public safety. He proposes practical solutions to some of the issues that will feed into the review currently being undertaken by the government in England. Usefully he also discusses the experience of prisoners who may fall under the legislation. He makes six specific proposals that should be included as part of the review.

The articles in this Special Issue contribute to the wider debate on how to ensure that the rights of older people are protected and promoted by legal and health practitioners. Older people are not an homogenous group. For some older people, older age is enjoyable. However, for others ageing involves complex health and social care needs. Dementia is an obvious example, although mental and physical health may also decline. As emphasised in this Special Issue, the interests and needs of older people must not be ignored by law makers and practitioners.

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