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Exploring the Spaces of Mental Capacity Law In Conversation with the Author: The Space of Mental Capacity Law: Moving Beyond Binaries, Beverly Clough. (Routledge, Abingdon, Oxon, 2021, ISBN 9781032115771, 208 pages, paperback £38.99)

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Introduction

In England and Wales, the Mental Capacity Act (MCA) 2005 provides the legal framework to determine whether an adult lacks capacity to make a decision for themselves, and if they do, what course of action should be taken in accordance with their best interests.¹ The MCA purports to empower adults with ‘mental impairments, or disturbances in the functioning of the mind or brain’, to take decisions for themselves, and to protect them where they are unable to do so. Yet, the powers that the Act grants to its decision-makers are significant, and under the auspices of best interests, individuals deemed to lack capacity may see care arrangements made for them which deprive of them of their liberty, or treatment imposed on them against their wishes. The operation of the MCA has attracted criticism for its failure to recognise the relational nature of human decision-making,² the prevailing dominance of medical decision-makers,³ and its focus on the lives or persons with disabilities.

Clough’s book⁴ adds to this growing body of feminist and disability scholarship by analysing mental capacity law through the lens of assemblages. This focuses on the conceptual spaces and context of mental capacity law, the norms that are created and/or reinforced through it, and the impact on the individuals that capacity law affects. In each chapter, the book calls attention to the binaries which the legislation relies upon and how they are reinforced in its interpretation and application. Clough forcefully argues that

1. Mental Capacity Act 2005, ss 1–4.

2. For example, Camillia Kong, *Mental Capacity in Relationship: Decision-Making, Dialogue, and Autonomy* (Cambridge: Cambridge University Press, 2017).

3. Jaime Lindsay, *Reimagining the Court of Protection: Access to Justice in Mental Capacity Law* (Cambridge: Cambridge University Press, 2022).

4. Beverley Clough, *The Spaces of Mental Capacity Law: Moving Beyond Binaries* (Abingdon: Routledge, 2022).

underlying these binaries are a number of assumptions about the lives of those with mental disabilities and the role of the state in relation to them, including *inter alia*, the static nature of disability, understandings of freedom/autonomy as non-interference, and the reinforcement of the liberal subject in law. In doing so, Clough not only challenges how the MCA operates, but its foundations and logics.

In our meeting on 1 March 2023, we discussed the insights the book could offer, using the recent case of *Re A*⁵ to draw out key themes.

Re A concerned a 23-year-old woman who had been diagnosed with a learning disability, Asperger's syndrome, and a number of physical health conditions including primary ovarian failure. Following a Court of Protection hearing in 2019,⁶ A was found to lack capacity to make decisions about her care and support, residence, and medical treatment, and to conduct litigation about these issues. In accordance with her determined best interests, A was removed from her mother's care and placed in a residential care placement (called 'Placement A' in the judgment) to receive treatment for her ovarian failure (i.e. to allow her to go through puberty). Contact was restricted between A and her mother, B, with whom she was said to have an 'enmeshed relationship'.⁷ B was party to the proceedings but was unaware that parallel closed proceedings were ongoing, where it was determined that A could be administered medication for her ovarian failure (which she had refused) on a covert basis. This information was not revealed to B, who was under the impression (from the open proceedings) that A was not receiving any medication in Placement A for over 2 years, defeating the purpose of the initial placement. She contested the placement on this basis, and was only made aware of the covert medication plan and closed proceedings at a hearing in 2022, by which time A had gone through puberty. Below is an edited transcript of our discussion.

Interview

Ruby: What led you to write this book? Did you draw inspiration from anywhere in particular?

Bev: Primarily I was finding myself increasingly frustrated with the way that debates around mental capacity law and the UN Convention on the Rights of Persons with Disabilities (CRPD) were playing out. It felt incredibly constrained – as though the parameters of the legislation, and the debate, were common sense and immutable. Debates were fixed in very binary positions (around autonomy vs paternalism and empowerment vs protection) and despite some really exciting and important work, for example around relational autonomy, this seemed to always hit up against paternalism. It also seemed that these parameters were set by a series of binaries that framed the legislation and legal and academic responses. The more that I engaged with disability studies, and feminist legal theory, it seemed that there were rich insights that offered important tools for

5. *Re A (Covert Medication: Closed Proceedings)* [2022] EWCOP 44.

6. *The Local Authority v A and Others* [2019] EWCOP 68.

7. *Op. cit.*, p. 97.

mental capacity scholarship and practice to better understand the legal landscape and the potential for change.

Ruby: In chapters 1 and 2, you detail your conceptual framework, space, and assemblages, and really centre the issue of disability in capacity law. Why did you choose space as a locus of critique and what insights do you think this offers?

Bev: I found when thinking about these binaries and these very ‘fixed’ parameters of law and critique that they took on an almost material and physical form; they created spaces for discussion, but we could not exceed these without really disrupting the logic of the law. For example, with the capacity/incapacity binary, it was as though we were physically moving incapacitous people into this imagined realm of incapacity, where different logics and approaches were seen as okay – a very physical space of difference. Legal geographers have demonstrated that these spaces, and their boundaries, are not fixed but instead rely upon constant reinforcement and maintenance. So looking through this lens invites us to look at the ways that these boundaries have been constructed, and the other boundaries that they are mutually dependent on, and we can better appreciate and understand the legal landscape and the processes through which it can be changed.

Ruby: In chapter 3, you focus on the capacity/incapacity binary, and something that comes through strongly here, and throughout the book is the individualisation of capacity and freedom, that is, how all of the concepts built around capacity rely on and reinforce an individualistic framing. One key theme you discuss is how this binary creates a ‘realm of incapacity’⁸ which people are moved into, with disability the mediator of who *can* be considered in capacitors versus who can’t. You also discuss the complexities of what gets framed as a ‘decision’, introducing the challenges of temporality to the framing process. I think that this comes across in the *Re A* case; A is found to lack capacity over a wide variety of issues: care and support, residence, contact, medical treatment, all things that she is found not to have capacity to do. What are your reflections on what that case says about the capacity/incapacity binary and how it is managed by the courts?

Bev: That’s something that really concerned me in *Re A*. We’re always told and we always tell our students that incapacity is not global, it’s decision-specific, and that we need to look at the particular decision or ‘the matter’ as *JB*⁹ now puts it. Looking at the assessment of A’s capacity in relation to residence, when she was in the hospital she repeatedly said that she wanted to go home, she wanted to be with her mother, and it was therefore suggested that A didn’t have capacity to understand the safeguarding concerns. It seems the way that ‘the matter’ is now framed is moving away from the development of the MCA and *Re F*,¹⁰ where it

8. Clough, *The Spaces of Mental Capacity Law*, p. 62.

9. *A Local Authority v JB* [2021] UKSC 52.

10. *Re F (Mental patient sterilisation)* [1990] 2 AC 1.

was about consent to specific medical treatment and a defence to battery. But what we tend to see in these cases is that 'the decision' becomes fuzzy. What is the 'decision' that someone is consenting to in relation to their understanding of safeguarding concerns? Where's that legal issue of consent? Our approach is chipping away at the realm of decision-making ability so that it effectively becomes a determination of global incapacity; everything becomes tied together. Of course, it's really difficult to split decisions into these discrete pockets and that's something that I wanted to make clear in the book; the assemblage approach is precisely about how things are entangled. But then it becomes almost fictitious to say 'we're not making global declarations of incapacity, it's decision-specific'. On the flip side, you see cases that do try to artificially silo decisions.

Ruby: Yes, like capacity in relation to contact and sex, two things which seem to be intimately linked, but get separated, giving rise to these *TZ*-style cases¹¹ where people have capacity for sex but not the contact, and it becomes really complicated to work out how to proceed in terms of care planning.

Bev: Exactly. So despite what's on the face of the legislation, when we will and won't see decisions as entangled, when we will and won't split them into silos, becomes really malleable. The book looks at what the effects of that are and who's got the power to determine it. A lot of people suggest the decision-specific element of the MCA is really positive, but we can also see in cases like *Re A* where it doesn't work like that. The malleability partly comes down to the informality of the MCA and the wide scope of discretion it gives.

Ruby: Similarly, there is also a question of framing what information is relevant to a decision. It was suggested that A did not understand the safeguarding concerns, but what does that mean? In the book you pick up on the ways in which actually the judiciary is actively shaping what is relevant and what isn't.

Bev: Yes, looking at the issue of 'does she understand the safeguarding concerns?', from the information in the judgment, it seems that she does understand them, she just disagrees. She talks about being happy with the opportunities that she's got and the life that she had at home; it seems that disagreement is often seen by professionals as a lack of understanding. The question arises as to how we mediate that and ensure that there's still space for people to shape their own lives. There's a lot in the book about how decisions are entangled and whether it's right for the MCA to almost pretend that they're not and artificially silo them. But if we go down that route of recognising how they are so entangled, then it would look very different and would need to be really careful with that as well.

Ruby: Absolutely. So moving to chapter 4, here you talk about the care/disability binary, and the conflict arising as a result of nineteenth-century

11. *A Local Authority v TZ (No 2)* [2014] EWHC 973 (COP).

deinstitutionalisation, where people with mental disabilities were moved into community spaces. You mention the potential for that to create new burdens for families, and how despite this conflict between ideologies of care and disability, they do have similar ideas and foundations which could be reconciled. You also discuss the way in which the MCA navigates this, coming back to its struggles to navigate the relationality of individuals, and the entanglement of their lives with their carers. We see in *Re A* and other cases that family members can be viewed as obstructive by the court. Are there any comments you would make on that?

Bev: So I found chapter 4 probably one of the hardest ones to write. There are several cases where people are taken away from family care, particularly when they reach 18 or are in their early 20s and it's suggested that they should be more independent. There are almost teleological ideas of progressing to being an adult and the independence that comes with that. This seems to really fit in with the ideal of the liberal legal subject that is at the heart of the MCA. I found these cases very difficult; it seems there is almost this impulse to say 'this is the life that you ought to be leading now', and you then get ideas circulating about obstructive family members.

Ruby: And it's really telling that some of the language that was used in the court really speaks to what you were saying there, such as 'the basic human right of every girl to blossom into a woman'.¹² That kind of language getting used picks up in this area as well.

Bev: Yes! I found that an awkward, uncomfortable quote when I read it. I think the idea of responsibility emerges here. It suggests the family has failed to enable you and therefore we're going to take you away and give you these skills. And in the *WMA* case¹³ I discuss in the book, they talk about things like using an oven; those sorts of skills are seen as really important, and references are made to how 'you could be at university, people your age are going to university and going out to parties and going out with friends'. But in *Re A*, A talks about how she went out with her mother, her mother's friend, her friend, they went shopping, they'd go to parties. But that isn't seen as enough of an independent life. One of the things the assemblage framework and the new materialist framework offers to law is to see how responsibility and accountability are framed. It's a division between family/state and public/private, and the responsibility exercised by the family in the private sphere is to create adults who can be functional liberal legal subjects. If they fail, the impulse is to take that person away to take on that responsibility in the public sphere. But that depends upon them being placed within the space of the incapacitous individual, taking away their decision-making ability and taking responsibility *for* them. But the flip side of that is the responsibilisation of the parents. It's almost always a mother as well, and there's

12. *The Local Authority v A and Others* [2019] EWCOP 68, [79].

13. [2013] EWCOP 2580, as discussed in Clough, *The Spaces of Mental Capacity Law*, pp. 88–103.

a whole range of literature that I would have loved to have gone into about ‘difficult mothers’, particularly in the context of disability, which you see coming out in a lot of these cases. In *WMA*, again, it’s about the failure of her as a mother.

Ruby: And in the *Lioubov Macpherson* committal hearing¹⁴ there was a similar kind of discussion about the ‘enmeshed relationship’ with the mother and how bad that is for the person the proceedings concerned.

Bev: Yes, we see this language of being enmeshed or too interdependent, whereas the relational theories are precisely about how everyone *is* enmeshed and interdependent. But recognising this seems to go against the grain of the MCA and the liberal ideas it’s built upon. It’s almost unapologetic, given the confidence with which interdependency is stated as a problem, and really shows how important the liberal legal ideas of autonomy and independence are. As soon as you hit 18, we start to be wary of a lack of independence. The responsibilisation of the mother in *Re A* is really interesting; the judgments there discuss problems that B might have and B’s refusal of social workers or support. Then it says in a throwaway sentence that she wasn’t involved with the care plan as a result. But just because someone is refusing to have a social worker doesn’t mean that they’re refusing to be involved in the development of a care plan. It suggests an idea that if someone is refusing services, that means they’re obstructive, so we’ll take away all of their decision-making. This raises concern about what the relationship is like with social workers, with support, and with the state generally, and you get a real sense of a lack of trust of services and professionals. This is also something often seen with people who have had service involvement over a long period of time, that lack of trust can often build when things become antagonistic. It’s not something that’s unique to *Re A* or *WMA*. But the MCA framework makes us look at it as obstruction, lack of engagement, and B’s failures as a mother. Again, in *WMA* the judgement talks about the messiness of the house, it paints this picture of obstructiveness, and suggests the need to save the person and take them away.

It’s difficult because we can only see what’s in the judgment and we can’t make assumptions about parenting ability or what actually happened. The problem I discuss in the book is about how the framing and logic of the MCA mean a lot gets missed. This includes what has happened before, but also means that you have to separate the person from the relationship in artificial ways. It happened in *Re A* in a very literal way – to deal with A, we had to take away her relationships. And the exclusion of A’s mother from what was happening ties into an idea that care ends as soon as someone is out of the domestic setting; once outside of the private sphere and into the public, then that care relationship ends. A lot of care theory, like Sophie Bowlby’s work on carescapes which I discuss in the book,¹⁵ really challenges this idea and shows how care extends,

14. *Sunderland City Council v Lioubov Macpherson* [2022] EWCOP 3.

15. S. Bowlby, ‘Recognising the Time-Space Dimension of Care: Caringscapes and Carescapes’, *Environment and Planning A: Economy and Space* 44 (2012), pp. 2101–2118.

and how even if people live in residential care you can still be a carer for them. It's not this binary again of informal care and moving into state care.

Ruby: And B is not allowed to be that carer because, per the best interests determination, all contact is cut off between B and A, A's grandparents and her uncle can see her but B cannot.

Bev: Exactly, it speaks to the separation of the private/public spheres, and it just means her involvement is totally severed. And thinking about trust, that will surely be really damaging. Mr Justice Poole in his judgment talked about the downsides of the covert medication, including a risk it would perpetuate distrust between A and her carers. I think that's right, but the fact that it could perpetuate distrust in relation to A's mother was totally ignored, and you can well imagine that the impact that that would have had on her too.

So the two key things that the chapter highlights that also came out in *Re A* were responsibility and trust. When you look at the closed proceedings judgment, the issue of trust in A also comes through. A really wanted to see a different doctor for a second opinion because of the history of distrust between her and Dr X, but this was seen as evidence of her incapacity and the influence of her mother. But looking at Dr X's evidence, I could really understand why there might be distrust there, and why not let her have that second opinion? I just found it really odd, but it ties into the idea that as soon as someone is seen to lack capacity then it delegitimises their views.

Ruby: Yes, how everything they've said gets used as further evidence of lack of capacity or lack of understanding, obstruction, disengagement . . .

Bev: . . . and the MCA forces us to deal with them as separate individuals, and that necessitates the villainising of mothers and families. It seems almost unnecessary and it was really striking with the *WMA* case as well, because there were concerns about the mother and her needs, but the MCA couldn't cope with that, it had to separate them and see her as a separate being, when it really struck me that they needed care and support together. Again, the logics of the Act prevented that from happening, and prevented an appreciation of the realities of care relationships.

Ruby: So we've already picked up on a lot of the themes from chapters 5 and 7, which really demonstrates how, as you discuss in the book, all of these binaries construct each other and we cannot think about them as operating separately because they work together. Chapter 5 focuses on the state/individual binary, and you talk about the created 'zone of non-interference'.¹⁶ And we've looked at a lot of the issues you discuss in the book, such as how intervention gets framed as a one-off even when there's a history of state involvement, and how empowerment is positioned as 'fixing' the person to make them fit the liberal legal subject mould. And it does appear in *Re A* that there was a focus on getting

16. Clough, *The Spaces of Mental Capacity Law*, p. 109.

her to be a ‘normal’ person, independent from her mother. Similarly, we’ve discussed the public/private binary that you focus on in chapter 7, another thing you discuss there is how judges will only scrutinise the options put on the table, and don’t appear to be able to imagine possibilities beyond what has been proposed, which means it becomes a matter of case management. I think the closed proceedings in *Re A* really speak to how they managed the options in a granular way. Are there any other insights from chapter 5 or 7?

Bev: I like how you’ve linked to the question of options on the table because that is still an area that I struggle with, how courts approach the issue of jurisdiction and the powers of the court. In certain ways, the Court of Protection is quite comfortable with expanding how the MCA functions, we’ve seen it with anticipatory declarations for future losses of capacity in childbirth.¹⁷ They can do creative things and to achieve certain ends, and I still find *Re MN*¹⁸ and *MAG*¹⁹ really unsatisfying and they are at the heart of this disempowerment that occurs through the MCA. It’s interesting to link that to what happened in *Re A* and the management occurring, because we also see a depoliticising effect where it’s given this seemingly neutral frame (which it isn’t) – ‘it’s just how the Act works, it’s just an assessment of capacity and best interests’. There’s a lot to think about when linking it to the issue on the table, because it is essentially power.

Ruby: And you see judges do it in many cases that they say, ‘well, that option is wholly unsatisfactory’ and they don’t really engage with it, but they will engage in detail with other options that they consider to be viable. And there’s an element of power in that, to shape what is and what isn’t a viable alternative, what should and what shouldn’t be considered possible or appropriate in a given case.

Bev: Definitely. As I also discuss in the book, they focus on the question of what the person could do if they had capacity, for example in *MAG*, and it is just baffling because the decontextualised rendering of what someone with capacity and without capacity could do completely ignores the social situation that they are in. Again, it reinforces these tropes of ‘you’re capacitous, so you’re this liberal, already empowered, individual making rational decisions’, regardless of the context that someone’s in and the power relations impacting on them. Thinking about *MAG*, if they were capacitous, what could they do? They wouldn’t be able to just walk away because they would be reliant on others to enable them to do that. Again, it’s shifting people into these imagined zones of capacity, reliant on non-disability, and a rationality that is not reflective of a lot of people’s lives. But the courts refuse to engage with that reality, because of the way the Act requires us to think.

17. *United Lincolnshire Hospitals NHS Trust v CD* [2019] EWCOP 24; *Guys and St Thomas NHS Foundation Trust and Another v R* [2020] EWCOP 4.

18. [2017] UKSC 22; [2015] EWCA Civ 411; [2013] EWHC 3859 (COP), as discussed in Clough, *The Spaces of Mental Capacity Law*, pp. 167–181.

19. *NYCC v MAG* [2015] EWCOP 64; [2016] EWCOP 5, discussed in Clough, *The Spaces of Mental Capacity Law*, pp. 175–181.

Ruby: The only chapter we haven't really talked about yet is chapter 6 that considers freedom/deprivation of liberty. In *Re A*, A was deprived of her liberty in Placement A, but was suggested to be happy and enjoying herself. Something that is discussed in academic debates at the moment is what situations result in a person being deprived of their liberty.²⁰ You talk about definitional issues in the book, and how 'deprivation of liberty' is constrained by what counts as interference, the role of the state, whether responsibility is shifted to the family, and the 'static materiality of liberty'.²¹ What insights do you think the assemblages approach offers to the issue of happiness to these definitional issues?

Bev: So this was another difficult chapter to write, it involved going back and looking at the political theory around liberty and what we mean by freedom and then channelling that through the cases, and it was interesting to see how disability features or doesn't feature in these political theories. In terms of the static materiality, there's a real sense, certainly in the Deprivation of Liberty Safeguards, of paradigmatic spaces of imprisonment. Whereas the family home is not seen as a place where people are deprived of their liberty, and we see that in case law like the *Cheshire West* litigation.²² So there was a lot of discussion I could pick up on regarding how the courts understand liberty, and the separating of the domestic sphere from the public sphere where it is accepted that people might be deprived of their liberty. One of the concerns that stemmed from that and in Lucy Series' work on institution/home²³ is 'what if people are happy?' and whether we should see them as being deprived of their liberty. It's a tricky one, and but I think *Re A* is a good example of this because in of the evidence it's suggested that she's happy after the covert medication has been given. But if you look at both judgements, A talks about just wanting to go home. So we need to be really careful about how we frame happiness, and when we frame happiness in terms of the temporality of the intervention. Do we look at this after the fact, look back with hindsight and say, 'well it might have had a difficult time for a while, but now they're happy, does that mean that they weren't deprived of their liberty all along?' Everyone who works in this area rightly flagged up that it links to the question of objection, and we need to be really careful how we understand that, and make sure that we really know the individual and the ways that they work. People can be medicalised into compliance as well. So to me, happiness doesn't seem to be the way forward, it could be a dangerous way forward and for all of those reasons and because of the subjectivity of happiness. I don't see the chapter on liberty as the end of the conversation, it's asking us to start considering how we think about liberty and untangling these things. If we're thinking about agency and empowerment and maximising the spaces

20. See e.g. Lucy Series, *Deprivation of Liberty in the Shadows of the Institution* (Bristol: Bristol University Press, 2022).

21. Clough, *The Spaces of Mental Capacity Law*, p. 135.

22. *P v Cheshire West and Chester Council and another; P and Q v Surrey County Council* [2014] UKSC 19.

23. Series, *Deprivation of Liberty in the Shadows of the Institution*, pp. 107–129.

through which people can exercise agency on an ongoing basis, then liberty and freedom have to come into that conversation. We need to think about expanding spaces for decision-making in a way that isn't constrained by static material space, for example, taking different approaches for people in hospitals or care homes versus domestic spaces. This facilitating of decision-making is really at the heart of the CRPD.

Ruby: You've brought me nicely onto the next question! You mention the CRPD throughout the book, not always uncritically, I think it's fair to say that you question its more liberal underpinnings. What would you say the CRPD offers to us? Not everyone sees it as a useful model, for example, Alex Ruck Keene and colleagues have recently questioned whether we would want to move away from capacity legislation towards CRPD compliance.²⁴ Using the assemblage lens, what should we take from the CRPD?

Bev: The way that it influenced the book is that it offers a really important opportunity and intervention at a time when people were becoming more critical of the MCA. The disability studies lens has impacted on mental capacity scholarship, which has been really beneficial to understand and what the MCA does and why it's problematic. And the CRPD seems to throw down the gauntlet and just make us rethink what we're doing, and *think* much more carefully. I think it helps us consider issues around decision-making and ties this to other issues like liberty, support, and health. The CRPD seems to capture the sense that decision-making and legal capacity are entirely intertwined with all these other things, and I don't think the MCA invites you to think about it in that way, and it struggles to do so for all the reasons I've discussed in the book. The book is not necessarily a ringing endorsement of everything that's in the CRPD, it's more an endorsement of the way it enables us to think differently. And I'm trying to say with the book, 'let's engage with that!' It might be that when we start to drill down to the legal and doctrinal level and how we can actualise the CRPD for certain aspects, it is problematic. It might be that we don't fully endorse certain ideas within it, but it's important to think it through and thinking through this interrelationship between the different articles of the CRPD, its underpinning ethos of the social model of disability, which disability studies have been really pushing for. So to me it's a great opportunity and also one that I don't think has been fully understood or taken on board by people working in this area so far.

Ruby: So one final question for you, what are the future directions for this research?

Bev: At the moment the theoretical ideas are taking me in a number of directions. Building on chapter 6, I've been thinking through ideas of home and liberty.

24. Alex Ruck Keene, Nuala B. Kane, Scott Y. H. Kim and Gareth S. Owen, 'Mental Capacity – Why Look for a Paradigm Shift?', *Medical Law Review*. Epub ahead of print 13 January 2023. DOI: 10.1093/medlaw/fwac052.

Cheshire West and the Liberty Protection Safeguards, with the opening up of domestic spaces, are a really important moment for thinking this through more carefully, and legal geography, disability studies, and feminist legal theory offer important tools to do this and to expand thinking in this area. I'm also really keen to think through different creative and participatory methods, working with disabled people, to think through the potential for new legal processes and approaches. It is really striking that these voices and experiences are often absent in research, for a variety of reasons. Finally, on a slightly different note, I'm working on research around birth doulas and medical law – drawing on the spatial, temporal, and agential lens that new materialism and legal geography offer, but thinking this through a different area of law.

Conclusion

As the discussion above demonstrates, Clough's book provided an insightful lens through which mental capacity law can be analysed from a broader perspective. This proves fruitful when comes to considering specific cases, broader patterns, and principles of mental capacity law. Her book will be of interest not only to scholars interested in the field, but also feminist and disability scholars, provoking the reader to question the foundations of the law, its impact on disabled adults, and helping us consider how we might do things differently. In such a contested arena, this further scrutiny is surely welcome.

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