

Legal Horizons and New Challenges  
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As we write this Editorial, and as we were when we took over as Editors, we are conscious that we walk in the footsteps of giants. The previous Editors, titans in the field of medical law, gave us very big shoes to fill, and the challenge was more than a little daunting. Individually the experiences that led us to Editorship are different, but also similar. Hazel remembers being amazed as a relatively junior academic to receive a formal letter from Professor Margaret Brazier claiming to be impressed by her published work and enquiring if she would be prepared to join the Editorial Board as an active member. At a time when it felt like a struggle to have the value of the discipline recognised by senior departmental colleagues ('it's just tort isn't it?'), this felt like a huge accolade. Subsequently becoming joint Editor-in-Chief was an enormous honour. Suzanne was delighted and somewhat astounded to be invited by Margot to join her and Kirsty Keywood on the Editorial Team in 2005, as Book Reviews Editor. She had the huge pleasure of working with and learning from them both on this team until 2011. Having witnessed the Editor-in-Chief role being undertaken so effectively during this time, when Margot decided that she would be stepping down, along with Kirsty, and asked Suzanne whether she would like to consider taking on the role of joint Editor-in-Chief with Hazel, Suzanne's first, stunned reaction was to pinch herself to check that she was not dreaming. As it was not April 1<sup>st</sup> and Margot seemed perfectly serious, Suzanne's only conceivable response was that yes, she would be absolutely honoured to do so.

Although the initial challenge of becoming Editors was daunting, it became a joy and immense privilege. The wider reconceptualization of the discipline into health care law, and then health law, and its expansion into different areas of enquiry, such as intellectual property rights in health data,<sup>1</sup> (synthetic) body parts<sup>2</sup> and artificial womb technology,<sup>3</sup> for example, meant that we often found ourselves on steep learning curves. However, these avenues brought a new generation of scholars, academics and practitioners into the field who were eager to publish in the *Medical Law Review*, and so, happily, there was never a shortage of excellent material for the journal.

Reflecting on the current state of play, the more traditional aspects of medical law – consent, information provision, issues and rights and the beginning and end of life - continue to generate substantive legal and ethical concerns, especially in the current socio-political climate. Looking back at the first special issue of our editorship, which focussed on death and dying,<sup>4</sup> we might be tempted to reflect that, in some aspects of our discipline, little has changed. Certainly, the early days of the COVID-19 pandemic saw concerns that resonated with calls in Moratti's paper for greater openness, dialogue and cooperation to promoted accountability and understanding.<sup>5</sup> We suggested then that absent some reconceptualization of the legal and moral arguments, end of life decision making might become further entrenched,<sup>6</sup> and, despite the

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<sup>1</sup> Barbara Prainsack and Alena Buyx, 'A Solidarity-based Approach to the Governance of Research Biobanks' (2013) 21 Med LR 71.

<sup>2</sup> Muireann Quigley and Semande Ayihongbe, 'Everyday Cyborgs: On Integrated Persons and Integrated Goods' (2018) 26 Med LR 276.

<sup>3</sup> Elizabeth Chloe Romanis, 'Artificial Womb Technology and the Choice to Gestate *Ex Utero*: Is Partial Ectogenesis the Business of the Criminal Law?' (2020) 28 Med LR 34.

<sup>4</sup> Hazel Biggs and Suzanne Ost, 'As it is at the End so it is at the Beginning: Legal Challenges and New Horizons for Medicalised Death and Dying' [2010] 18 Med LR 437.

<sup>5</sup> Sofia Moratti, 'End-of-Life Decisions In Dutch Neonatology' [2010] 18 Med LR 471.

<sup>6</sup> Hazel Biggs and Suzanne Ost, 'As it is at the End so it is at the Beginning: Legal Challenges and New Horizons for Medicalised Death and Dying' [2010] 18 Med LR 437.

wealth of work on concepts such as compassion<sup>7</sup> and a tranche of case law in the intervening years,<sup>8</sup> it seems that that may have come to pass. John Coggon opined back then, that in this area conservative political processes might be limiting any capacity for change;<sup>9</sup> yet, as we observe recent political interference in the right to abortion in the USA,<sup>10</sup> we may reflect that some limits on such processes might actually be regarded as beneficial.

Back across the pond, articles and commentaries in the *Medical Law Review* have continued to engage critically and powerfully with actual and potential challenges to autonomy in numerous contexts such as adolescents' consent to treatment,<sup>11</sup> pregnant women's refusal of (emergency) caesarean-sections,<sup>12</sup> and (in)capacity under the Mental Capacity Act 2005.<sup>13</sup> An increasing number of scholars are engaging in empirical research, producing new and important findings of interest to policy and law makers, and legal and medical practitioners.<sup>14</sup>

In the current social and political climate and crisis of living, the fragility of access to health care treatment has become all the more tangible and the future of the NHS all the more vulnerable. Besides providing us with a stark reminder of the vulnerability of our health on a global scale, the COVID 19 pandemic also continues to impact on timely access to treatment on the NHS.<sup>15</sup> Finding an NHS dentist, perhaps a previously taken-for-granted service, has become impossible in some areas.<sup>16</sup> Reports of staff shortages<sup>17</sup> and graphic depictions of the

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<sup>7</sup> Hazel Biggs, 'Legitimate Compassion or Compassionate Legitimation? Reflections on the Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide' (2011) 19 *Feminist Legal Studies* 83, Dermot Feenan, 'Law and Compassion' (2017) 13 *International Journal of Law in Context* 121, Jonathan Herring, 'Compassion, Ethics of Care and Legal Rights' (2017) 13 *International Journal of Law in Context* 158.

<sup>8</sup> *R (Nicklinson) v Ministry of Justice* [2014] UKSC 38; *R (on the application of Conway) v Secretary of State for Justice* [2018] EWCA Civ 1431; *R (on the application of T) v Ministry of Justice* [2018] EWHC 2615 (Admin); *R (on the application of Newby) v Secretary of State for Justice* [2019] EWHC 3118 (Admin).

<sup>9</sup> John Coggon, 'Assisted Dying and the Context of Debate: "Medical Law" Versus "End-of-Life Law"' (2010) 18 *Med LR* 541.

<sup>10</sup> Jessica Glenza, 'How Soon could US States Outlaw Abortions if Roe v Wade is Overturned?' <<https://www.theguardian.com/usnews/2022/may/04/us-supreme-court-abortion-explainer>> accessed 1 July 2022.

<sup>11</sup> Kirsty L Moreton, 'A Backwards-step for *Gillick*: Trans Children's Inability to Consent to Treatment for Gender Dysphoria—*Quincy Bell & Mrs A v The Tavistock and Portman NHS Foundation Trust and Ors* [2020] EWHC 3274 (Admin)' (2021) 4 *Med LR* 699.

<sup>12</sup> Katherine Wade, 'Refusal of Emergency Caesarean Section In Ireland: A Relational Approach' (2014) 22 *Med LR* 1; Sara Fovargue, 'Anticipating Issues with Capacitous Pregnant Women: *United Lincolnshire NHS Hospitals Trust v CD* [2019] EWCOP 24 and *Guys and St Thomas' NHS Foundation Trust (GSTT) and South London and Maudsley NHS Foundation Trust (SLAM) v R* [2020] EWCOP 4' (2020) 28 *Med LR* 781.

<sup>13</sup> For instance, Emma Cave, 'Protecting Patients from their Bad Decisions: Rebalancing Rights, Relationships, and Risk' (2017) 25 *Med LR* 527; Paul Skowron, 'The Relationship between Autonomy and Adult Mental Capacity in the Law of England and Wales' (2019) 27 *Med LR* 32.

<sup>14</sup> See, for example, Hannah Bows and Jonathan Herring, 'DNACPR decisions during Covid-19: An empirical and analytical study' (2022) 30 *Med LR*; Rob Heywood, "'If the Problem Persists, Come Back To See Me ...'—An Empirical Study of Clinical Negligence Cases Against General Practitioners' (2019) 27 *Med LR* 406–431; Nili Karako-Eyal and Roy Gilbar, 'Family Involvement in the End-of-Life Decision-Making Process: Legal and Bioethical Analysis of Empirical Findings' (2021) 29 *Med LR* 497; Nola M Ries, Elise Mansfield and Rob Sanson-Fisher, 'Advance Research Directives: Legal and Ethical Issues and Insights from a National Survey of Dementia Researchers in Australia' (2020) 28 *Med LR* 375; Ash Samanta, Jo Samanta and Joanne Beswick, 'Responsible Practice or Restricted Practice? An Empirical Study of the Use of Clinical Guidelines in Medical Negligence Litigation' (2021) 29 *Med LR* 205–232.

<sup>15</sup> Ian Sample, '30,000 cancer patients waiting for treatment in England' *The Guardian*, 2 May 2022.

<sup>16</sup> Denis Campbell, "'Dental deserts" form in England as dentists quit NHS, experts warn', 1 May 2022.

<sup>17</sup> Nick Trigg, 'The areas with the fewest GPs revealed' *BBC News*, 31 May 2022, at <https://www.bbc.co.uk/news/health-61598158> (last visited 15 June 2022).

impact of long waiting times in A & E on staff and patients<sup>18</sup> are perhaps indicative of the ways in which long term underinvestment<sup>19</sup> is increasing dissatisfaction with the way political policies are influencing the functioning of the NHS. The relationship between politics and health care continues to be a stormy one, and we can only speculate about what the outcomes might be for patients and whether these developments might lead to future legal challenges.

There is thus much to capture the intellectual interest of contemporary health law scholars. We are pleased, and more than a little relieved, to have been able to leave the *Medical Law Review* in good shape and to pass on the baton, safe in the knowledge that it will continue to thrive and develop. Our tenure as Editors was hugely aided by our co-editors for Book Reviews and Commentaries, Sara and José. With them, we moved from Margot's Editorial team model of a *trifemate* to a quartet, and while we might question the success that the four of us would have had as a barbershop quartet, we certainly benefitted greatly from their involvement in the stewardship of the journal. We have no doubt that, with them at the helm, the journal will continue to flourish as it develops into its thirties.

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<sup>18</sup> Anon, 'Princess Alexandra Hospital A&E patients warned of 13-hour wait' BBC News, 9 June 2022, at <https://www.bbc.co.uk/news/uk-england-essex-61730717> (last visited 15 June 2022).

<sup>19</sup> Andrew Gregory, 'Rundown NHS hospitals have become a danger to patients, warn health chiefs' *The Guardian*, 14 June 2022.