This analysis of the law’s approach to healthcare decision-making critiques its liberal foundations in respect of three categories of people: adults with capacity, adults without capacity and adults who are subject to mental health legislation. Focusing primarily on the law in England and Wales, the analysis also draws on the law in the United States, legal positions in Australia, Canada, Ireland, New Zealand and Scotland, and on the human rights protections provided by the European Commission for Human Rights and the Convention on the Rights of Persons with Disabilities. Having identified the limitations of a legal view of autonomy as primarily a principle of non-interference, Mary Donnelly questions the effectiveness of capacity as a gatekeeper for the right of autonomy and advocates both an increased role for human rights in developing the conceptual basis for the law and the grounding of future legal developments in a close empirical interrogation of the law in practice.

**Dr Mary Donnelly** is Senior Lecturer at the Law Faculty, University College Cork, where she teaches medical law at undergraduate and postgraduate levels.
This series of books was founded by Cambridge University Press with Alexander McCall Smith as its first editor in 2003. It focuses on the law’s complex and troubled relationship with medicine across both the developed and the developing world. In the past twenty years, we have seen in many countries increasing resort to the courts by dissatisfied patients and a growing use of the courts to attempt to resolve intractable ethical dilemmas. At the same time, legislatures across the world have struggled to address the questions posed by both the successes and the failures of modern medicine, while international organisations such as the WHO and UNESCO now regularly address issues of medical law.

It follows that we would expect ethical and policy questions to be integral to the analysis of the legal issues discussed in this series. The series responds to the high profile of medical law in universities, in legal and medical practice, as well as in public and political affairs. We seek to reflect the evidence that many major health-related policy debates in the UK, Europe and the international community over the past two decades have involved a strong medical law dimension. Organ retention, embryonic stem cell research, physician-assisted suicide and the allocation of resources to fund health care are but a few examples among many. The emphasis of this series is thus on matters of public concern and/or practical significance. We look for books that could make a difference to the development of medical law and enhance the role of medico-legal debate in policy circles. That is not to say that we lack interest in the important theoretical dimensions of the subject, but we aim to ensure that theoretical debate is grounded in the realities of how the law does and should interact with medicine and health care.

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HEALTHCARE DECISION-MAKING AND THE LAW

Autonomy, Capacity and the Limits of Liberalism

MARY DONNELLY
For John, Cormac, Kevin and Brendan
CONTENTS

Acknowledgements  page xiii
List of cases   xv
List of legislation  xxii

Introduction  1
The scope of the discussion  3
The format for discussion  6

1 Autonomy: variations on a principle  10
Principle in practice: the elevation of autonomy in medical ethics  11
A shift in focus  12
Responses in the ethics literature  14
The role of autonomy in ethical guidance for professionals  15

Autonomy: the philosophical antecedents  16
A Kantian conception of autonomy  17
John Stuart Mill: the classic liberal view  19

The limitations of traditional autonomy  22
Autonomy, agency and the nature of the subject  23
Normative critiques of autonomy  33
The limitations of the traditional view: some conclusions  40

Autonomy as an ‘achievement’  41
Autonomy and adequacy of choice  41
Agency, empowerment and autonomy-building  45

Conclusion  47

2 Autonomy in the law  49
Locating the legal right  50
A right in action: autonomy, consent and the right to refuse 52
   A right to refuse treatment 53
   Treatment refusal: behind the rhetoric 57
   Dealing with concerns about agency 59
   Limiting the legal right 65
   Gaps in the law’s approach 70

Autonomy and positive obligations 77
   Autonomy as a positive right in the European Court of Human
   Rights 77
   Information and communication: obligations in the law of tort 80

Conclusion 88

3 Capacity: the gatekeeper for autonomy 90
   Capacity in the law: the normative choices made 91
   A functional, decision-specific test 92
   A presumption of capacity 93
   The relevant abilities: understanding, reasoning and authenticity 94
   The irrelevance of outcome 101
   The role of risk 102

Limitations of the ‘liberal account’ of capacity 108
   Capacity: a relational phenomenon 108
   Outcome, risk and uncertainty 114
   Atomised tasks and the functional approach 119
   Authenticity and egosyntonicity 123

Alternatives to capacity 125
   Vulnerability as an alternative to capacity 125
   Significantly impaired decision-making 128

Conclusion 130

4 Capacity assessment in practice 131
   Components of the capacity requirement 132
   The ability to understand information 133
   The ability to retain information 138
   The ability to use and weigh information 139
   The abilities in summary 147

Judicial determinations, process and the role of expert
evidence 147

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CONTENTS

The process for formal assessment  148
The role of expert evidence  152

Delegation of capacity assessment under the MCA  156
Who are the assessors?  157
Assessing capacity: what the MCA expects  158
Assessing the assessors  160
Dealing with assessors’ limitations  169
Improving the quality of assessments  170

Conclusion  175

5  Autonomy, rights and decision-making for patients lacking capacity  176

The traditional models and their limits  177
Decision-making for people lacking capacity: historical antecedents  177
The best interests standard  179
The substituted judgment standard  185
The limits of the traditional approaches  192

Protecting autonomy in incapacity: frameworks for decision-making  192
Protecting precedent autonomy: advance decision-making  193
Assessing the contribution of the frameworks for advance decision-making  195
Recognising current views: participative decision-making  205

A rights framework beyond autonomy  211
Understanding dignity  212
Protecting dignity: the contribution of the ECHR  213
Practical application of ECHR rights  221

Conclusion  224

6  Treatment for a mental disorder: a case apart  225

Treatment for a mental disorder: the law in England and Wales  226
The legislative framework: Part 4 of the MHA 1983  227
The impact of the ECHR on Part 4 of the MHA 1983  234
The CRPD: a ban on compulsion?  240

A differential approach to autonomy: the normative questions  241
Differential treatment and the rights of others 242
Autonomy in action: a capacity-based approach to treatment 246
Assessing the autonomy-based model 252

Beyond traditional liberalism: a framework for decision-making 255
The realities of decision-making: the extent of formal compulsion 256
Autonomy as ‘achievement’ in mental health law 257
Delivering on autonomy as achievement in mental health law 259
Beyond autonomy: review and accountability 263

Conclusion 268

Conclusion 269
Autonomy as empowerment 269
Capacity: a flawed gatekeeper 272
The role of law 274
Human rights and patient rights 277
Empirical evaluation and the law in practice 278
Final observations 280

Bibliography 281
Index 310
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[2010] EWCA Civ 822
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LIST OF CASES

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xviii

LIST OF CASES

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LIST OF CASES

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Re W [1970] 2 All ER 502
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XX

LIST OF CASES

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LIST OF CASES

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LIST OF LEGISLATION

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