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A New Era for Mental Health Law and Policy. Supported Decision-Making and the UN Convention of the Rights of Persons with Disabilities

by Piers Gooding. Cambridge University Press 2017 ISBN: 0978 1107 1407 45
price £69.99 hardback; £22.99 Paperback

Reviewed by

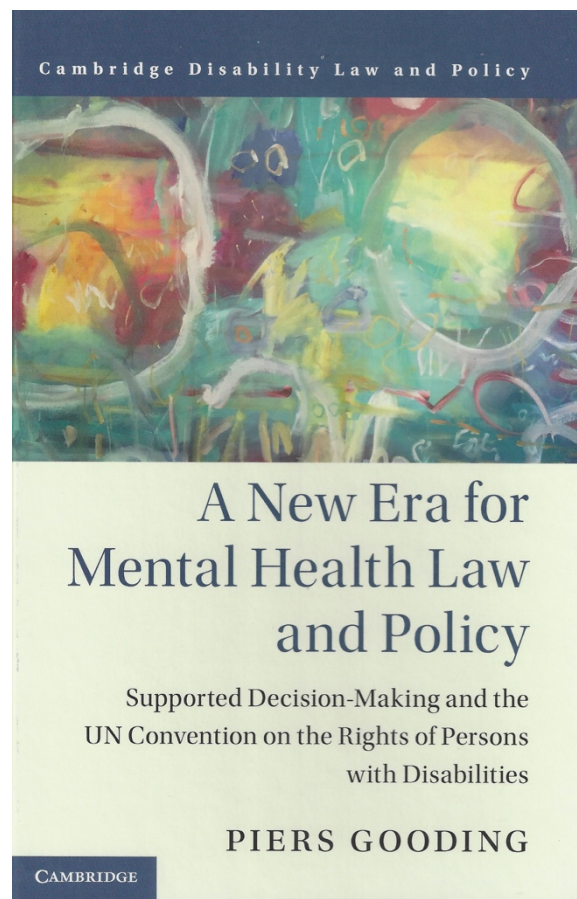
Dr Peter Carpenter. Consultant Psychiatrist & Special Visitor for the Court of Protection.

The United Nations Convention of the Rights of Persons with Disabilities was adopted by the United Nations General Assembly in 2006 and came into force on the 3 May 2008 with its 20th signatory. The United Kingdom is a signatory though the United States is not.

Compliance in participating states is monitored by the Committee on the Rights of Persons with Disabilities.

This Convention commits states 'to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity' and binds them to the principles of inclusion, equality of opportunity and respect for individual autonomy.

Two of its important provisions for the United Kingdom is the right to inclusive education [on which the UK has made a reservation] and its model of mental capacity which advocates supported decision making rather than the almost universal system of substituted decision making.



This is one of the few books dedicated to this aspect of Mental Capacity. It appears to have been developed from Dr Gooding's PhD on the effect of the UNCRPD on mental



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health law. Dr Gooding deals with the subject at length in 7 chapters. The first part covers why this new convention of human rights requires a change in the principles that lie behind most existing mental health law, and the second part the more practical effects of the UNCRPD for mental health law and the replacement of 'best interests' with 'Will, Preference and Rights'.

As Dr Gooding quickly points out, the UNCRPD does not mention supported decision making, though since the convention was adopted, its Committee has frequently referred to a 'supported decision making regime' as the overarching support framework in law and policy required by the UNCRPD.

This is a worthy book aimed at researchers and is a useful source of thinking on mental health law from across the world. It is a good review of the writings of various commentators and lawyers on the effect of the UNCRPD. However it ends up being a book limited by what others have written. It reviews in general detail what has been put in place but gives little detail of any law passed, or codes of practice issued.

As a clinician I found this book frustrating. Dr Gooding does not write from a clinician's viewpoint. Whilst the book gives 'practical examples of the CRPD support framework', these prove to be reviews of aspiring models and systems with no firm detail of how things work in practice. Given the title concentrating on supported decision making, no clinical examples are used to illustrate the problems involved in decision making and how to overcome them using a supported decision making legal framework. No example is given of how across the world people have enabled effective supported decision making in a person with profound dementia or profound disorder of intellectual development or profound head injury and how decision making can be routinely supported whilst ensuring lack of malevolent influence. The Committee on the UNCRPD says that Costa Rica is the only state to use full supported decision making. This book does not study how it works there and what are the learning points.

I was surprised that the book did not look at how the UNCRPD was written, and the politics involved, or the politics of the Committee and how it has chosen to interpret the Convention. It does not discuss how far the requirements for only supported decision making are aspirational or realistic in practice.

This is a book aimed at researcher and policy makers. A clinician will not find it a useful resource for thinking how to make their practice with a particular patient compliant with the Convention. A policy maker will read of the virtues but not the practical difficulties of supported decision making.