Special Section: Relations and Health—Interdisciplinary Reflections, edited by Marianna Iliadou, pages 347-476

Guest Editor's Introduction

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Welcome to this Special Section of Volume 8 of *Amicus Curiae*. As Guest Editor, I am delighted to introduce "Relations and Health—Interdisciplinary Reflections".*

The theme behind this Special Section is that relations are fundamental to health and healthcare. They shape how care is provided and received, how decisions are made, how vulnerability and autonomy are understood, and how rights and responsibilities are distributed. The study of relations in the context of health law has traditionally centred on relationships between patients and healthcare professionals, and on the limitations of an individualistic conception of autonomy. The development of concepts such as relational autonomy (Nedelsky 2012), the relational self (Herring 2019) and relational consent (Maclean 2013) has significantly enriched this field by foregrounding the social embeddedness of individuals and the importance of relationships of care.

This Special Section builds on that scholarship but seeks to broaden the enquiry. It originated from a one-day workshop titled "Relations and Health Law", hosted in October 2024 by the Healthcare Law Research Group at the University of Sussex. The workshop was organized around a deliberately expansive understanding of relations in the field of health law. Moving beyond the conventional academic focus on relational autonomy, it investigated how legal rules shape, and are shaped by, complex webs of institutional power, technological developments, professional gatekeeping and wider social structures.

However, the Special Section that emerged from those conversations is not simply a collection of workshop proceedings. Central to its editorial ambition was a commitment to bridge the divide between theoretical

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scholarship and legal practice, bringing the insights of academic researchers into direct conversation with the professional experiences of practitioners who navigate, foster and manage these relational dynamics in practice. Therefore, the workshop provided the starting point for a broader project, in which the resulting contributions are diverse in subject matter, perspective and approach, drawing on philosophy, health law, human rights, family law, adult social care and legal practice. Despite that diversity, all contributions share a concern with what a relational perspective enables us to discern about law.

Importantly, the articles in this Special Section do not treat relations as inherently positive. Relationships can sustain care, identity, agency and belonging, but they can also distribute power unequally, reproduce social hierarchies, create dependencies and become sites through which control is exercised. Law itself is not external to these processes. Across the five contributions, law does more than regulate relationships. It can determine which relationships receive recognition, allocate authority among those involved, enable or constrain forms of care and influence whose choices, experiences and interests carry legal weight.

Opening this collection, Peter West-Oram's "Illiberal Liberty: Analysing the Hidden Harms of Conscientious Objections in Health Care Provision" examines these dynamics through conscientious objection in healthcare. Focusing on abortion and contraception, West-Oram challenges the compatibility of conscience-based exemptions with the liberal pluralist commitments through which they are commonly defended. His argument moves beyond questions of whether conscientious objection creates practical barriers to healthcare. Even where access can ultimately be preserved, he argues, state recognition of a right to refuse participation may itself wrong and harm those seeking care by legitimizing beliefs that place their reproductive autonomy and bodily integrity in a subordinate position. By legally accommodating such refusals, the state implicitly treats as reasonable the position that women's fundamental liberty rights to bodily integrity and reproductive autonomy hold secondary status to the conscience claims of professionals who have voluntarily assumed gatekeeping duties. West-Oram further traces the contemporary trajectory of "conscience creep", showing how conscience claims are increasingly expanding to justify overt discrimination based on sexual orientation and against trans people, shrinking the boundaries of solidaristic concern.

David Benbow's "Embodied, Affective and Relational Selves and Anorexia Nervosa (AN)" turns to the way in which law and academic

commentary in England and Wales conceptualize patients with longstanding and severe eating disorders, with particular attention to Court of Protection case law concerning anorexia nervosa under the Mental Capacity Act 2005. Drawing on Jennifer Nedelsky's account of the self as embodied, affective and relational, supplemented by Alasdair MacIntyre's philosophy, Benbow argues that assessments of capacity and autonomy, as well as decisions concerning the continuation or cessation of forced treatment, may be unjustifiable where insufficient attention is paid to the embodied, affective and social conditions in which that individual exists. Of particular importance is his extension of relational analysis beyond immediate interpersonal relationships. Stigma, access to treatment, gaps in professional awareness and training, resource constraints and the cultural valorization of thinness form part of the social environment within which illness develops and legal decisions are made. While acknowledging that stopping forced treatment can be justified where treatment is considered non-beneficial or inappropriate, Benbow argues that characterizing continued treatment as "futile" without addressing these embodied, affective and broader social realities risks reifying patients as untreatable, medicine as static and anorexia nervosa as purely metabolic.

My own contribution, "Care without Status: Intended Mothers in the ECtHR's Surrogacy Jurisprudence", examines another dimension of law's constitutive role. Situated at the intersection of health and family law, surrogacy brings assisted reproduction, pregnancy and childbirth into direct contact with legal parenthood and relational recognition. Through a feminist anti-stereotyping analysis of the European Court of Human Rights' surrogacy case law, the article argues that gestation and birth continue to operate as the normative baseline of legally self-evident motherhood. Consequently, an intended mother's reproductive intention has limited constitutive force, leaving non-gestational maternal claims dependent on the child's European Convention on Human Rights Article 8 rights, the legal position of the genetic intended father and domestic mechanisms such as adoption. This also exposes her reproductive project to both regulatory and normative scrutiny. The article demonstrates how apparently neutral legal reasoning may reproduce gendered hierarchies. It introduces "care without status" and develops "derivative motherhood" to capture, respectively, the disjunction between maternal caregiving and legal status, and the mediated structure through which intended motherhood is recognized. By naming this structure of legal dependency, the article reveals that the treatment of intended mothers is not merely

an issue of parenthood recognition, but a gendered process in which some forms of motherhood are treated as legally self-evident while others remain conditional upon external validation.

Questions of legal recognition and relational practice are taken in a different direction by Sylvie Armstrong and Melissa Elsworth in "A Relational Approach to Surrogacy and Assisted Reproduction: Opportunities and Limits in Legal Practice". Writing from the perspective of legal practitioners, Armstrong and Elsworth consider what adopting a relational approach actually requires of lawyers working with surrogacy. They examine the practitioner's role at three stages: creating and maintaining relationships between adults, validating or legalizing parental relationships, and managing conflict where it arises. Their analysis demonstrates both the possibilities and limits of law as a mechanism for supporting relationships. Legal practitioners may facilitate communication, clarify expectations and help secure recognition, while the adversarialism and rigidity associated with conventional legal processes may sit uneasily with relationships that are dynamic and often oriented towards a shared objective. The article consequently looks both to legal reform and to professional best practice. While the former can address restrictions on professional support, such as drafting and advising on surrogacy agreements, the latter depends on practitioners working collaboratively across disciplines, communicating flexibly with clients and other participants, and making creative use of mechanisms, such as mediation, in relational contexts whose dynamic character may not fit conventional legal models.

The importance of the practitioner as an actor in shaping legal intervention is also central to Bethane Harland and Iko Onuh-Goddard's "Autonomy and the Lawyer's Role: Enabling Choice or Exercising Control? Insights from Adult Social Care Practice". Drawing on their experience as local authority solicitors, the authors examine the difficult boundary between respecting autonomous choice and intervening to protect adults from harm. Mental capacity, safeguarding, coercion, dependency and risk are encountered not as abstract categories but within the complexity of people's lives and relationships. The authors also examine the tension between protection and liberty in deprivation of liberty cases, considering the impact of the UK Supreme Court's recent decision in *AGNI* (2026), which favoured an evaluative assessment of the individual's concrete situation, wishes, feelings and consent. The overarching question in this contribution is what role lawyers themselves play in determining how those circumstances are translated into legal action. It argues that advising requires both identifying whether a lawful power to intervene

exists and critically assessing whether intervention should occur at all, through scrutiny of the evidence, necessity, proportionality, the individual's wishes and the availability of less restrictive alternatives. Thus, legal advice becomes one of the sites at which the boundary between protection and control is negotiated in practice.

Taken together, these contributions show that a relational approach to health law requires attention both to interpersonal bonds and the structural dynamics that shape them, such as gender, professional authority and institutional power. Recurring themes connecting the articles include the distribution of power over who defines risk and status, the constitutive role of law in shaping relationships and allocating authority within them, and the gap that can emerge between abstract legal categories and lived experiences of care, dependency and decision-making. Running through these themes is the role of legal and professional actors in mediating questions of authority, recognition and intervention. In several contributions, this takes the form of gatekeeping: conscience exemptions may privilege healthcare professionals' moral claims over patients' reproductive autonomy; clinical and judicial assessments of capacity and futility shape treatment decisions for patients with anorexia nervosa; domestic rules and Strasbourg's legal reasoning gatekeep parental recognition in surrogacy, leaving intended motherhood dependent upon forms of external validation; and adult social care lawyers help shape how risk is framed and whether protective intervention should be pursued. Armstrong and Elsworth offer a related but distinct perspective, presenting legal practitioners in surrogacy principally as relational facilitators who support relationships and legal recognition within the constraints of statutory rules and adversarial processes.

As this Special Section demonstrates, law and legal practice help determine how relationships are understood, which are recognized or obscured, whose interests and choices carry legal weight, and how authority is distributed. In bringing these dynamics into view, these articles demonstrate the value of relations as a critical lens through which health law can be reconsidered. I hope that the diverse contributions to this Special Section stimulate further engagement with relations and health law both within and beyond academia.

References

Herring, Jonathan. *Law and the Relational Self*. Cambridge: Cambridge University Press, 2019.

Maclean, Alasdair. *Autonomy, Informed Consent and Medical Law: A Relational Challenge*. Cambridge: Cambridge University Press, 2013.

Nedelsky, Jennifer. *Law's Relations: A Relational Theory of Self, Autonomy, and Law*. Oxford: Oxford University Press, 2012.