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Résumés du XXXIVe Congrès International de Droit et de Santé Mentale

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life, on their terms, requires a conscious understanding of the values that underlie our ethical principles. This presentation will consider the role of ethics in Elder Mediation and the work of the Elder Mediation International Network (EMIN) in developing appropriate ethical standards across the globe. Drawing on Laue and Cormick (1978), Margaret will consider the significance of the values and underlying assumptions of Elder Mediators, and how they inform our decisions and interventions in the mediation process.

83. Fit to Plead – Fit for Purpose?

Fitness to Plead – Historiography and Impact

Andrew Forrester, *South London and Maudsley NHS Trust, London, UK*
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In this talk, which introduces the workshop, aspects of the historiography of fitness to plead will be described. Historically, there were difficulties differentiating between those who were unable to plead, and those who chose not to. Juries were introduced from 1583 to help Courts determine whether individuals were mute by malice, or by visitation of God. Meanwhile, the practice of *peine forte et dure* (pressing with a heavy weight, until death occurred, or a plea was entered) was introduced to assist the determination. Systemic and structural changes in 19th Century England (including the opening of Broadmoor Hospital), and case law (including *R – v - Dyson*, 1831; *R – v – Pritchard*, 1836) shaped the criteria which remain in use today. Their subsequent debate in the 20th Century is discussed, and questions regarding their overall impact and fitness for purpose are presented.

Proposals to Reform Fitness to Plead in England and Wales

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The Law Commission published a consultation paper in October 2010 proposing reform of the law on unfitness to plead in England and Wales; the Commission intends to publish a report in Spring 2015. The current criteria for fitness to plead is based on *R v Pritchard (1836)* and the consultation paper proposes to replace this with a new test of the defendant's "decision making capacity." The consultation paper refers to a number of cases and raises concerns about the adequacy of the current criteria. However the number of such cases are limited, considering the current criteria have been in use for more than 150 years, and most of them involve homicide. The relevance of proportionality in decision-making and the proposed use of an as yet to be defined psychiatric test are discussed.