

## **Tina Minkowitz - Legal Capacity and Law: Why It Matters**

Legal capacity is a patriarchal construct that enables the maintenance of a society based on competition rather than cooperation. Those who are in a dominant position (male, white, non-disabled etc.) take for granted their own "soundness of mind" and presume to judge that of others, denying those Others the status of actors in the legal system and making them instead passive dependents. Madness has been and continues to be a primary ground to deny people the right to act for themselves: to vote, to marry, to make a will or a contract, and most importantly to make decisions about health care and residence. The "capacity standard" is increasingly being used as a way to enforce compulsory psychiatric treatment on those who do not want it, by judging them incapable of making a rational decision about such treatment. What is wrong with this picture?