Book Reviews


The inspiration for the book, according to the author, was fired by the conversations he had with students who, when faced with the question, ‘[a] person decides they want to die and seeks the help of their doctor. What does and what should the law say the doctor should do?’1 tended to answer that the doctor should facilitate the fulfilling of the request.2 Further questioning would reveal that in their responses, these students were focusing on issues of assisted suicide. They did not mean that any member of the public who would approach a doctor for help in suicide should meet with the response ‘yes, let’s do it, how can I help you?’3 Arguably, this demonstrates that more attention should be given to the legal issues around suicide prevention in the law curriculum. A huge amount of time and energy is spent by professionals, academics, and politicians considering issues of assisted suicide for the very few situations where terminally ill people would like the law’s support for their wish to die, as Herring highlighted in *Medical Law Review* previously.4 It remains a pressing issue and is one of the reasons why this is a timely and important book. In the conclusion to Chapter 8 he writes, ‘[s]adly, much of the debate around end-of-life decisions in the academic literature, media and legal materials does not discuss these [suicide prevention] issues. Instead, the arguments focus on the provision of euthanasia and assisted dying.’5 One of the key points that the author seeks to highlight throughout the book is that there are positive legal obligations in relation to the prevention of suicide; Herring focuses his argument on suicide in relation to human rights articulated in the European Convention on Human Rights in Article 2 (the right to life), Article 3 (protection from torture) and Article 14 (protection from discrimination).6

First, a note on terminology. Words have power to influence us and our actions and they influence our inner attitudes and feelings, sometimes without us being conscious of this happening. The phrase ‘committing suicide’ is used in the title and within the book though it is apparent that suicide is not regarded in this book as a crime (this is what to some the verb ‘to commit’ implies). Because words are so important an organisation ‘Reporting on suicide’

1 Jonathan Herring, *The Right to Be Protected from Committing Suicide* (Hart Publishing 2022) 1.
2 In this reply it is interesting to note the apparent disregard to autonomy of doctors as professionals. Doctors seem to be seen here as gatekeepers and facilitators and there does not seem to be a need or, indeed, space for their professional opinion on what they are being requested to do.
3 Herring (n 1) 1.
5 Herring (n 1) 200.
6 ibid 109.
put together a set of guidelines on the most helpful way of reporting about suicide. In general, these recommendations are asking to avoid using the phrase ‘to commit suicide’ because of the association of the verb ‘to commit’ with the noun ‘crime’. The title of this book has already been criticised for the use of the verb ‘to commit’ in this context. I wondered if for this book specifically the use of the word ‘committing’ in the title might have been chosen to create a contrast to the theme of ‘right’ but Herring uses it also freely throughout the book and does not comment on the reasons for this.

The book has a well-ordered, thematic structure with each theme similarly organised, starting with a presentation of the argument, an in-depth discussion of related issues and then the conclusion. This clear structure is followed throughout the whole book and helps the reader to follow the argument as Herring sets the scene in the initial chapters and then develops the case to then tackle the legal nuances in detail in Chapters 6–7. The rest of the book provides a useful background by attempting to analyse suicide and place it into a rigorous legal space. A close look at the subject reveals how big a challenge this is, starting even with the definition of suicide. For the purpose of this book Herring decides to choose ‘intentional killing of self’ but the content of Chapter 2 details the various snags with the definition of suicide which can be different when factors like causation, intent, acts or omission are taken into account.

There is an endeavour to include in this book an overview of suicide from other than just the legal perspective. Chapter 3, ‘The Causes of Suicide’ goes through some theories about the nature of suicide and a number of different proposed causes. The disadvantage of such an approach is that although the topic is raised it does not go into enough detail to be persuasive in answering the query raised. For example, Chapter 3 includes a brief entry about studies that link alcohol and suicide and the fact that up to 50% of adults might have been intoxicated with alcohol at the time of death. This contributes little to elucidating the causes of suicide. Herring mentions that disinhibition and impulsivity while under the influence of alcohol are the most common explanations but that cannot be concluded from the study cited as the study was not designed to prove causality. The same paragraph makes a misguided reference to a study about coffee consumption and suicide risk. While perhaps the author thought that writing about the causes of suicide is necessary to ensure that the subject of suicide is discussed in a comprehensive way, it could also be argued that analysing various possible causes of suicide is not relevant enough to the argument of the book and it goes too far outside the legal field.

Chapter 4 is devoted to ‘Societal Responsibility for Suicide’. This theme serves well as preparation for the later argument that suicide prevention is a human right and a duty to prevent it falls on the state. Herring goes back to Émile Durkheim who first framed suicide in the societal context in 1897 in his seminal text Le Suicide. Durkheim postulated that the risk...
of suicide increases as the degree to which a person is integrated in society decreases.\textsuperscript{14} This theory has been since confirmed by extensive research.\textsuperscript{15}

Section 4 of this chapter focuses on ‘Suicide and the Relational Self’. A strong thread in Herrings work is a focus on relational autonomy and the relational self\textsuperscript{16} and this provides a distinctive appeal and alternative perspective on key issues in this book. The section 4.6 (Poverty) is less convincing even though it aims to highlight a very real and challenging truth: the statistical link between poverty and suicide.\textsuperscript{17} Herring illustrates this by listing a series of cases where adverse external factors precipitated suicide, but it is questionable whether stories like the one about Christelle Pardo, who jumped from a balcony, killing herself and her infant after her jobseekers’ allowance was stopped,\textsuperscript{18} are helpful in furthering the argument of the state’s duty to prevent suicide. Such cases could be juxtaposed against these that tell stories of outstanding resilience in the face of adversities such as the well-documented example of Oprah Winfrey, who was born to single teenage mother and ‘wore dresses made of potato sacks, for which other children made fun of her’.\textsuperscript{19} The emotive stories may serve to maintain interest or provide an interlude but for the same reason might be seen as irrelevant to the legal argument and a distraction from what otherwise is a well-focused discourse. And yet, when placed in the context of the Chapter 4 theme of ‘Societal Responsibility for Suicide’ these cases emphasise the point that resilience is often seen as societally produced.\textsuperscript{20}

Chapter 6, ‘Human Rights and Suicide’, explores this issue in detail. It discusses Rights and Duties (Chapter 6 Part 2) and in particular the extent of the duties. The case of Melanie Rabone,\textsuperscript{21} who died by suicide in 2005, is often brought up in discussions about suicide and the extent of the duties of the state. Discussing this case and a number of other relevant cases from the UK and other jurisdictions,\textsuperscript{22} Herring arrives at the conclusion that the case law does indicate that the duty extends further than to the people who at the time were in the care of the state. It indicates that other critical issues to consider are if the person was vulnerable and if the state knew or ought to have known about the risk of the suicide.\textsuperscript{23}

The extent of the duty is a matter of considerable importance. For example, following the suicide of a university student, there were calls that the university had a duty to prevent it.\textsuperscript{24} If it is reasonable to establish a duty to try to prevent suicide, what is the reasonable extent of that duty? Alex Ruck Keene writes that ‘there has been growing political opinion from the government that human rights laws have “gone too far” and which seek to roll back the positive obligations that have developed’.\textsuperscript{25} This is part of an open and wide-reaching debate and, for example, Lord Sumption during The Reith Lectures\textsuperscript{26} questions the usefulness of some human rights as legally important concepts relegating them to area of politics. Herring

\textsuperscript{14} Emile Durkheim, \textit{On Suicide} (Penguin Books 2006).


\textsuperscript{18} Herrings work is a focus on relational autonomy and the relational self\textsuperscript{16} and this provides a distinctive appeal and alternative perspective on key issues in this book. The section 4.6 (Poverty) is less convincing even though it aims to highlight a very real and challenging truth: the statistical link between poverty and suicide.\textsuperscript{17} Herring illustrates this by listing a series of cases where adverse external factors precipitated suicide, but it is questionable whether stories like the one about Christelle Pardo, who jumped from a balcony, killing herself and her infant after her jobseekers’ allowance was stopped,\textsuperscript{18} are helpful in furthering the argument of the state’s duty to prevent suicide. Such cases could be juxtaposed against these that tell stories of outstanding resilience in the face of adversities such as the well-documented example of Oprah Winfrey, who was born to single teenage mother and ‘wore dresses made of potato sacks, for which other children made fun of her’.\textsuperscript{19} The emotive stories may serve to maintain interest or provide an interlude but for the same reason might be seen as irrelevant to the legal argument and a distraction from what otherwise is a well-focused discourse. And yet, when placed in the context of the Chapter 4 theme of ‘Societal Responsibility for Suicide’ these cases emphasise the point that resilience is often seen as societally produced.\textsuperscript{20}


\textsuperscript{21} Rabone v Pennine Care NHS Trust [2012] UKSC 2.


\textsuperscript{23} Herrings work is a focus on relational autonomy and the relational self\textsuperscript{16} and this provides a distinctive appeal and alternative perspective on key issues in this book. The section 4.6 (Poverty) is less convincing even though it aims to highlight a very real and challenging truth: the statistical link between poverty and suicide.\textsuperscript{17} Herring illustrates this by listing a series of cases where adverse external factors precipitated suicide, but it is questionable whether stories like the one about Christelle Pardo, who jumped from a balcony, killing herself and her infant after her jobseekers’ allowance was stopped,\textsuperscript{18} are helpful in furthering the argument of the state’s duty to prevent suicide. Such cases could be juxtaposed against these that tell stories of outstanding resilience in the face of adversities such as the well-documented example of Oprah Winfrey, who was born to single teenage mother and ‘wore dresses made of potato sacks, for which other children made fun of her’.\textsuperscript{19} The emotive stories may serve to maintain interest or provide an interlude but for the same reason might be seen as irrelevant to the legal argument and a distraction from what otherwise is a well-focused discourse. And yet, when placed in the context of the Chapter 4 theme of ‘Societal Responsibility for Suicide’ these cases emphasise the point that resilience is often seen as societally produced.\textsuperscript{20}


\textsuperscript{25} Alex Ruck Keene, ‘Mental Capacity Law’ <https://www.mentalcapacitylawandpolicy.org.uk/ten-years-since-rabone-where-are-we-now-inquest-seminar-6-december/> accessed December 2022.

approaches this differently, Chapter 6 (‘Human Rights and Suicide’) strives to link human rights to legal frameworks in the UK and analyses how the state’s duty to protect life translates into suicide prevention and what could be the extent of this duty. In ‘Great Debates in Medical Law and Ethics’, Goold and Herring explain the difference between a right and a liberty as consisting of the fact that a right, to exist, requires existence of a corresponding duty. Thana C de Campos asserts that emphasis on ‘autonomy of patients and their individual rights’ leads to disregard of relational duties and creates imbalanced milieu where there are no duties aligned to the corresponding postulated rights. Additionally, when unwell, people ‘necessarily experience a reduction in their capacity for individual autonomy’ and for this reason relying in a significant way on the principle of autonomy fails to reflect the reality and complexity of the situation. The deliberations of the ethics of suicide in Chapter 5 lead to conclusions that autonomy is an uncertain concept when considering suicide and it is difficult to determine the extent of its existence in people’s mental states. Considering the gravity and irreversibility of the decision about suicide a correspondingly ‘rich form of autonomy’ would be necessary to justify it.

Chapter 7 discusses ‘The Current Law on Suicide’. Suicide was decriminalised in England in 1961. Sadly, mental health professionals report that criminal sanctions for suicidality are still in force in England at present. A large part of Chapter 7 is taken up with the discussion about the possible need for improvement of the Mental Health Act and Mental Capacity Act so as to help to prevent suicide. Much of the time suicidal intent comes on the background of a mental health illness but how often and how to establish when this is the case is a matter of heated debate. However, when suicide is determined to be due to illness, it prompts the question if the current mental health laws in the UK are congruous with the United Nations Convention on the Rights of Persons with Disabilities (CRPD). This has been discussed in Medical Law Review recently and Herring devotes pages 155–159 to clarification of his views on this. He points out that it is an error of reasoning to seek equality by treating those with and without mental disorders in the same way. Additionally, not providing means of detention for persons with mental impairments when suicidal could be viewed as denying them the provisions that they are entitled to according to Article 10 (Right to Life) of CRPD and therefore as discrimination.

One of the consequences of there being a right to be protected from suicide is the duty of the state to provide better mental health services that would lead to a decrease in the rate of suicide. Calls to improve mental health services are common but they usually place the issue on the practical level of what the population’s health needs are and correspondingly what provision is needed. Herring’s approach here is also very pragmatic. He has raised the same point elsewhere voicing his ‘despair over the end-of-life debates’ filling ‘mountains of...
books’ while legal regulation around death and dying needs to connect to pertinent health and social issues. In keeping with this view and also because they are of marginal relevance to the main subject of the book, the topics around euthanasia and suicide are briefly considered in the last chapter of the book.

Overall, this book lives up to its thought-provoking title and challenges stereotypical thinking by highlighting the role that everyone other than the suicidal person has in a suicide. It changed how I will think about suicide, especially its societal and legal aspects. It is apparent from the start that Herring wrote this book because he has a message to communicate. The case is well presented and the debate includes arguments from differing standpoints but the discourse arrives at the conclusion, which is the key message of the book, that there is a human right to be protected from suicide. The novel approach Herring took within this topic is likely to generate further debate within legal academia. The detail and the precision of the theoretical discourse coupled with emphasis on practicalities of law implementation and concern for vulnerable individuals make the book an attractive read for medico-legal scholars.

Ewa Posner
Oxford Health Foundation Trust, UK

https://doi.org/10.1093/medlaw/fwad010
Advance access publication May 22, 2023


This edited collection discusses assisted suicide and euthanasia, drawing on a range of expert views to discuss the subject holistically. In particular, assisted suicide and euthanasia are discussed from a regulatory perspective in Part 1 of the book, an ethical and moral perspective is explored in Part 2, a rights’ perspective in Part 3, and in Part 4 as ‘transgressions’ of established norms. The book presents death as a right that should be made available subject to safeguards if the individual requests it. Below I present each Chapter as it is set in the book. The book will appeal to those working in the area, and as the editor suggests, it can be read from start to finish, or one can approach the book selectively, based on interest. It is a brilliant collection of chapters, combining highly theoretical accounts on the debate, expert accounts of the rights perspective on assisted suicide and euthanasia, and some fascinating accounts of more ‘hands-on’ empirical approaches relevant to assisted suicide and euthanasia.

PART I: LEGAL CHANGES AND CHALLENGES

Penney Lewis in Chapter 2 reflects on her 2007 book ‘Assisted Dying and Legal Change’. It is an interesting read for those who have followed her work over the years, with the author making some new claims on past arguments, reflecting on her past analysis in light of recent developments. The chapter explores various options in terms of regulation as well as the legal routes to it in different jurisdictions, first, constitutional rights mainly looking at Canada and Colombia as examples. Secondly, the defence of necessity and its restrictive interpretation in the UK, contrasted with the Dutch approach towards the defence that eventually led to the 2001 legislation. Thirdly, the defence of medical exception, mainly referring to the Netherlands and Montana, USA. Finally, the author discusses legislative approaches to regulation, mainly referring to the USA, Quebec, Canada, Australia, Belgium, and Luxembourg. The author reflects on key criteria of access, such as the condition of the individual or the