

**SUICIDE AND THE LAW, BY ELIZABETH WICKS (HART, 2023,  
HARDBACK, £76.50; PAPERBACK/EBOOK £61.20)**

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This book by Elizabeth Wicks, Professor of Human Rights Law at the University of Leicester, stands in fascinating contra-distinction to Jonathan Herring's recently published "The Right to be Protected from Committing Suicide" (Hart, 2022).<sup>1</sup> Herring sought to develop a sustained argument for a more assertive interpretation of Article 2 ECHR. Wicks argues, if not exactly for the contrary, but for an approach within the law which is considerably more open to the concept of autonomous decision-making about the end of life. Whilst Wicks does not downplay the need for preventative interventions in the case of what she describes as "incapacitated self-caused risks to life," the tenor of her work is very different to that of that of Herring's (and, helpfully, the timing of the two publications means that she is able to engage with it directly at a number of points).

Given these different approaches, how the reader responds to the respective works is likely, in part, to be a reflection of how they feel about the underlying arguments being advanced. To show my hand, I am instinctively considerably closer to Herring than Wicks. It was also perhaps unfortunate that I came back to completing this review of Wicks' book having just read a further excellent, and disturbing, blog about the 'capacity for suicide phenomenon'.<sup>2</sup> It is doubly unfortunate that I started reading her book having just finished listening to a BBC Radio 4 documentary about the 'Serenity Integrated Mentoring' approach.<sup>3</sup> This approach enjoyed a dangerous vogue amongst police and mental health services in relation to 'high intensity users', at least part of the approach apparently having been based upon criminalising suicidal behaviour on the part of such users, and resting in significant part to rest upon the concept that such users have capacity to take their own life.

Wicks clearly agrees that there is such a concept (indeed, as she identifies in her conclusion, the law's "proper ambit" should be defined by reference to whether a person has capacity to choose to die). I am certainly not arguing against this concept; however, I did have the feeling that Wicks' book – and her arguments – would have benefited from what could crudely be called a 'reality check' of engagement with the issues that have been thrown up by SIM and/or (earlier) by the Independent Review of the Mental Health Act, which pointed to the dangers of people being denied care

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<sup>1</sup> Reviewed at [2022] IJMHL 83.

<sup>2</sup> Jane Fisher, *The 'capacity for suicide phenomenon' and the Mental Capacity Act*, available at <https://www.madintheuk.com/2023/04/capacity-suicide-phenomenon/>. See also here Wren Aves: "If you are not a patient they like, then you have capacity": Exploring Mental Health Patient and Survivor Experiences of being told "You Have the Capacity to End Your Life". *Psychiatry is Driving Me Mad*. 2022. DOI:10.13140/RG.2.2.34386.84163, available at <https://www.psychiatryisdrivingmemad.co.uk/post/if-you-are-not-a-patient-they-like-then-you-have-capacity>.

<sup>3</sup> File on Four, 'Punished for being Mentally Ill' (last broadcast 19 March 2023): available via <https://www.bbc.co.uk/programmes/m001k0qx>.

on the basis that they are said to have capacity to take their own life.<sup>4</sup> There are also a number of points at which the focus on case-law and legal academic commentary did leave me missing the equivalent engagement in Herring's book with clinical and sociological literature.

It is certainly not that Wicks is not capable of placing the law in context. She does so in a very strong, and fascinating, chapter (3) on the legalisation of suicide in the United Kingdom, drawing on archival research and offering penetrating insights into the way in which the Suicide Act 1961 was, in effect, smuggled through Parliament by the then-Home Secretary 'Rab' Butler.

It is perhaps important, though, to note that Wicks has chosen to write a book primarily of legal scholarship, rather than of socio-legal scholarship. And on its own terms, it provides a very clear overview of the numerous ways in which law interacts with the idea of suicide. Particularly helpful is the way in which Wicks develops these interactions in a range of contexts, from suicide in detention, to the suicide of children and young people, to suicide and refusal of treatment at the end of life, before finishing with the debates around assisted suicide. Too often, suicide is 'silo-ed' off from discussions around (say) refusal of life-sustaining treatment: Wicks makes clear just how problematic this is conceptually in her excellent chapter (7) on this issue.

Conversely, the chapter on suicide in detention did seem to me to move onto very abstract terrain in its defence of a proposition that the focus on mental capacity would be "entirely suitable" for the prison context as the touchstone for determining whether or not intervention is justified. Wicks had previously in chapter 4 sought to develop a concept of mental capacity bolstered by diachronic continuity,<sup>5</sup> and suggests (page 119) the "challenges posed by the prison environment mean that most attempts at suicide would not meet this standard." However, having acted in inquests following suicides in prison detention, I, for one, left the chapter not entirely convinced that the answer to the "unique" challenges of prison suicide "can better be resolved by means of a stringent application of the standards [of capacity outlined above]" (page 120). Further, here and elsewhere, I did keep coming back to the question of whether (even a 'heightened') capacity-based approach is really sufficient, as opposed to just necessary. Or is this based upon an unduly 'thin' version of autonomy which does not pay sufficient attention to the contexts within which choices are made, and the extent to which choices reflect the options which are or are not put forward to the person?<sup>6</sup>

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<sup>4</sup> See also in this regard, from a clinical perspective, the work of Dr Chloe Beale, including Beale, C. (2022). Magical thinking and moral injury: Exclusion culture in psychiatry. *BJPsych Bulletin*, 46(1), 16-19. doi:10.1192/bjb.2021.86 and, more recently her article co-authored (inter alia with me), Beale, C., Lee-Davey, J., Lee, T., & Ruck Keene, A. (2023). Mental capacity in practice part 2: Capacity and the suicidal patient. *BJPsych Advances*, 1-10. doi:10.1192/bja.2022.82. For a discussion between Chloe and I about these issues, see: Alex Ruck Keens, *Suicide and the (mis)use of capacity – in conversation with Dr Chloe Beale*, available at <https://www.mentalcapacitylawandpolicy.org.uk/suicide-and-the-misuse-of-capacity-in-conversation-with-dr-chloe-beale/>.

<sup>5</sup> I.e. that a person's decision to take one's own life is consistent with the person's identity and the story of their life, looking also to their future (see pages 88-89).

<sup>6</sup> I did repeatedly think whilst reading Wicks' book of the work of Jonas-Sebastian Beaudry in the context of the rapidly evolving context of medical assistance in dying in Canada. See in particular, his 2018

Overall, however, and whether or not one agrees with the thrust of Wicks' thesis – and the arguments she develops in the final chapter for law reform – the book is a stimulating and elegantly written work, covering a very wide range within a relatively short (221 page) compass. It will certainly be taking its place on the reading list for my Law at the End of Life course at King's College London next year, as I suspect it will – and should – on the reading list of equivalent courses; it is also a work that will challenge practising lawyers who have any involvement in these areas, and will hopefully also make its way before the Health and Social Care Select Committee of the Westminster Parliament as it grapples at the moment with its inquiry into assisted dying/assisted suicide.<sup>7</sup>

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article, *The Way Forward For Medical Aid in Dying: Protecting Deliberative Autonomy Is Not Enough*, Supreme Court Law Review, Second Series, 85, available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3189417](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3189417).

<sup>7</sup> UK Parliament, Health and Social Care Committee; see <https://committees.parliament.uk/work/6906/assisted-dyingassisted-suicide/>.