

Herring, Jonathan, *Law and the Relational Self*, Cambridge: Cambridge University Press, 2020, 197 pp, hb £85.00

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Modern Law Review

First published: 24 September 2020

<https://doi.org/10.1111/1468-2230.12587>

News media reported last summer that a young man living with autism had passed away. The man apparently struggled with depression which, compounded by the punitive nature of the benefits system, eventually led to his suicide. The young man's death was undiscovered until many months later, when officers from the housing association visited his home in order to evict him for failure to pay his rent. According to publicly available information, the deceased's parents battled for years to see their son, who was under the care of the local social services. However, when their son refused contact, his decision was upheld on the grounds that he was classified as an adult with the independence to make his own choices. When the young man subsequently experienced financial difficulty and was unable to navigate the welfare services, it appears he was left unsupported to fend for himself. His death, and similar ones like it (see F. Ryan, *Crippled*, London: Verso, 2019), expose fundamental flaws in certain liberal concepts underpinning legal institutions in England and Wales.

In *Law and the Relational Self*, Jonathan Herring promotes ambitious ideas for law reform to overcome the limits of liberal individualism and better accommodate caring relationships in the legal system. In the first half of the book, Herring develops a theoretical framework, which he later applies to practical examples in medical law, family law and criminal law. Several of Herring's proposals have the potential, if implemented, to prevent the untimely deaths of persons living with disability and overcome other forms of harm that stem from contemporary laws and policies. Given existing failings and their sometimes tragic consequences, legal practitioners and scholars would do well to consider Herring's suggestions for reform.

Herring's principal theoretical move is to turn from the 'individual self', which dominates legal thinking in England and Wales, to the 'relational self' (Chapter 1). Instead of picturing the self as independent and detached from others, Herring presents a version of the self that is inherently relational and intricately entwined with its social relations. On this view, autonomy is not realised simply when an individual makes an isolated independent decision; rather, true autonomy manifests itself when conditions are such that an individual may engage in collaborative decision-making with other people who are affected by deliberative outcomes (18). While the ideal of the individual self is based on values of self-sufficiency, rationality, and independence, the relational ideal is rooted in values of trust, mutuality, and interdependence (23). Herring elaborates a predominantly normative vision of the relational self that the law, he argues, ought to embrace, rather than engaging in ontological debates about the nature of the self *per se*. The picture of the relational self that Herring develops benefits from contributions by scholarship on gender, race, and disability; Herring's original insights build an image of the relational self through the lens of disability in particular. After outlining a view of the relational self in Chapter 1, Herring introduces the notion of the 'vulnerable self' in Chapter 2. Countering a view that treats a person living with disability as uniquely vulnerable, Herring follows Martha Fineman in asserting that '[w]e are all vulnerable ... and we should be thrilled about that' (24). From this position of universal vulnerability, he argues, we can see more clearly how the state is structured in a way that supports the vulnerabilities of some (those classified as able bodied), while neglecting to support the vulnerabilities of others (such as those who live with disabilities).

Two further theoretical chapters, on 'the caring self' (Chapter 3) and the inverse of 'the abused self' (Chapter 4), build up Herring's account of the relational self. In essence, Herring treats caring relationships as constitutive of a moral good which the law ought to be geared towards encouraging and protecting. Consequently, the law ought to penalise and discourage abusive relationships; and when relational abuse does occur, this should be treated as an aggravating factor in attributions of criminal responsibility owing to the deep and prolonged psychological harm to which relational abuse can lead. By including the abused self in his theoretical framework, Herring creates room for considering the risks contained within relationships, where power imbalances and webs of oppression can be used as mechanisms to abuse rather than as resources for sustaining care. This is why, Herring argues, the law ought to be especially responsive in such cases of abuse.

In the second half of the book, Herring moves to explore how conceptions of the relational self might be applied in several legal fields and outlines specific ways that the law could be reformed better to accommodate the relational model. Medical law topics are given prime attention. First, Herring considers the debate about bodily ownership, and proposes widening individualised notions of ownership to include the interests of affected relational others who are also harmed when the bodies of loved ones are mistreated, in life or in death. Herring then gives detailed consideration to *capacity*, another heavily individualised legal notion, which he argues should incorporate more relational understandings. For example, Herring proposes a reversal to the prevailing assumption of capacity: the starting premise should be that all individuals lack capacity to make fully informed choices, until sufficient information and guidance are provided. In relation to capacity and best-interest decisions, Herring further points out that what is good for us is often also what is good for our loved ones: 'We need to examine people's choices in light of the relationships within which they live and the feelings of worry, concern for others and obligations they may have' (112). Finally, Herring challenges dominant legal notions of personhood, which over-valorise intellectual capacity, and overlook other important aspects of personhood, such as an individual's capacity to love and care, to be kind and generous, and so on.

In Chapter 6, Herring examines family law and the relational self. Fundamentally, instead of prioritising sexual relationships, Herring pitches caring relationships as the preeminent relationships that family law ought to be orientated towards: 'what might make a relationship worthy of promotion by the state is care and mutual support, rather than sex' (145). In accordance with this view, the law ought to remedy unequal distribution in caring relationships so as to achieve greater equality. Herring makes several proposals for how this could be achieved by, for example, valuing the caring contributions of marriage beyond the metric of economic calculation, and recognising that caring relationships and responsibilities do not necessarily end when marriages are terminated (148-155).

In the final Chapter 7, Herring reflects on improvements that could be made to criminal law. In keeping with his earlier theoretical development of the abused self, Herring argues for a broader understanding, and more serious treatment, of relational abuse. Rather than looking only at a temporal snapshot of criminal harms, as tends to occur in the current legal framework of offences against the person, Herring proposes that a continuing series of events in the course of a relationship ought to be a target of criminalisation. Lawmakers should 'watch the streaming of the relationship, rather than looking at a photograph of the incident' (170). Herring also urges us to move beyond the view adopted in parasitic liability, whereby individuals working together are automatically seen as suspicious, for most of what we do in life is a collective enterprise. Instead, Herring suggests that criminal law should focus more on collective responsibility. In so doing, Herring maintains, criminal law would be better equipped to respond to corporate harms and local authority failures.

Herring's assorted proposals have potential for positive law reform. Wider consideration of affected stakeholders, and a deeper appreciation of how decisions and actions affect a broader collection of actors, is, in my view, much needed. Overemphasis on autonomy and the neglect of caring relationships can have devastating results, as this review's opening vignette tragically illustrates. Accordingly, Herring comes down against a general presumption that 'the large majority of people have capacity to make an autonomous decision' (117). Dispensing with that presumption, Herring encourages us to view the possible vice of treating someone who has capacity as if they do not as an acceptable price to pay for ensuring support to those lacking capacity who desperately need it.

Herring's proposed approach is open to predictable lines of critique. Many prominent feminists have long argued against relational approaches to the law, since women have historically been constructed as tied within webs of relationships and thereby held responsible for the actions of others. While Herring, anticipating this objection, appeals for an approach rooted in non-domination, the feminist worry has practical traction in the absence of wider structural reform. Similarly, activists and scholars living with disability have fought to be recognised as independent individuals, and not to be construed as 'vulnerable'. In response, we ought to acknowledge Herring's call to recognise the fact of *universal* vulnerability, inherent in our shared human condition. Yet recognising this shared vulnerability should perhaps prompt a different response: not to adapt the law so that the choices of the individual take into account the preferences of those on whom they depend, but to empower those with unmet vulnerabilities to make their own decisions. At any rate, something like this conviction animates large parts of the current disability rights movement. More argument may be required to convert activists and theorists who value the good of the autonomous individual into disciples of universal vulnerability and co-dependency as normative goods.

Relatedly, Herring largely sidesteps metaphysical debates about the nature of the self. Pitching his policy and legislative proposals at the normative level, he does not resurrect communitarian arguments about 'the self' as constitutive of the communities which it forms, and vice versa. Focusing on prioritising the good of the relational self over the individual self may have been a strategic choice, for it enables Herring to move beyond baseline debates and explore practical ways in which relational theory might be implemented in English and Welsh law. However, there are times when Herring jumps from a metaphysical premise to a normative conclusion, and the reader may be looking for something substantive to bridge the gap. For example, Herring argues that '[p]eople are in their very nature interdependent and vulnerable. It flows from this that the basic moral value of humans is not found in their individual capabilities or in their membership of the species, but rather in their relationships' (136). While there might be a compelling case for making this normative step, if only by way of counterweight to dominant individualistic forms of thinking, it is insufficient simply to assert that the conclusion flows from that premise. A large volume of scholarship contests this manoeuvre, or implicitly opposes it. Lawyers attracted to the relational view face the difficult task of shifting jurisprudential debates beyond the currently dominant position. They will need, I suspect, to engage in a deeper and more systematic way with fundamental features of our shared moral framework. Absence of deeper normative engagement partly explains why for example the liberal ideal of the autonomous individual proves so stubbornly resistant to theoretical criticism.

The lens of socio-economic class offers a possible entry point into these deeper philosophical issues. A rich body of academic work focusing on working-class communities provides a window into how structural factors and power imbalances will likely hinder the development of the relational conception of the self in the English and Welsh legal system. For example, the ethnographic insights of Beverley Skeggs, Vik Loveday, and Insa Koch reveal that the relational

and caring self is operative and indeed flourishing among disadvantaged communities in England. However, it might be precisely because of the experience of class disadvantage that overt reliance on others is a practical necessity. This brings us back to the normative issue of whether true individual autonomy ought to be more widely accessible to more people in their everyday lives, or whether the legal system ought to better accommodate the relational self. In *Law and the Relational Self*, Herring shines a much-needed spotlight onto these timely debates. Indeed, even just raising the possibility of how the law might accommodate an alternative conception of the self suggests a promising change of theoretical direction. May the discussion long continue.