

# PEER REVIEW REPORT

**Manuscript Title:** Acts of Knowledge: Criminal Liability for Conduct Precipitating Death in Persons with Known Psychiatric Conditions

**Journal:** Scottish Science Society

**Article Reference:** Article 4, Issue 7, Volume 1

**Review Date:** January 2026

**RECOMMENDATION: Accept with Minor Revisions**

## Summary Assessment

This is a well-researched comparative legal analysis examining criminal liability frameworks across three jurisdictions (England and Wales, Portugal, and Brazil) for conduct contributing to suicide in persons with psychiatric vulnerabilities. The manuscript demonstrates considerable scholarly rigour and addresses an undertheorised area of criminal law with genuine practical significance. The theoretical grounding is sophisticated, and the comparative methodology is sound. The work merits publication subject to relatively minor revisions addressing issues of length, selectivity, and certain analytical refinements.

## Strengths

### 1. Originality and Contribution

The manuscript addresses a genuinely underexplored intersection of criminal law, mental health, and interpersonal relationships. The central argument—that knowledge of psychiatric vulnerability should operate as a critical variable in liability determinations—is well-articulated and persuasively defended. The comparative framework illuminates how different legal traditions conceptualise responsibility and causation in fundamentally different ways, which is valuable for both scholars and practitioners.

### 2. Theoretical Sophistication

The engagement with philosophical literature is commendable. The discussion of autonomy (Mill, Frankfurt, Dworkin), vulnerability theory (Fineman, Herring), and moral luck (Williams, Nagel) provides robust normative foundations for the doctrinal analysis. The author avoids the

common error of treating these frameworks as providing determinate answers, instead acknowledging the genuine tensions they illuminate.

### **3. Methodological Rigour**

The selection of jurisdictions is well-justified, representing common law, continental European civil law, and Latin American civil law traditions. The functional comparative approach—examining how different systems address common problems—is appropriate for the inquiry. Primary sources are accurately cited, and the author demonstrates facility with materials in multiple languages.

### **4. Doctrinal Accuracy**

The treatment of English law (particularly the evolution from *Kennedy (No 2)* through *Wallace*), Portuguese codified provisions (Article 135), and Brazil's distinctive reclassification mechanism is technically accurate. The author correctly identifies the significance of the *Wallace* decision for causation doctrine and appropriately notes its limits remain to be fully explored.

### **5. Practical Relevance**

The analysis has clear implications for prosecutors, defence counsel, and judges confronting these cases. The edge case analysis in Appendix A is particularly useful for practitioners navigating borderline scenarios.

## Weaknesses and Recommendations

### 1. Length and Selectivity

The manuscript is excessively long for a journal article format. At approximately 15,000+ words (excluding appendices), it exceeds typical limits for most periodicals. The five appendices, while individually valuable, collectively add substantial bulk.

*Recommendation: Consider either (a) reducing the main text by approximately 20-25%, consolidating the appendices into a single extended supplementary section, or (b) splitting the work into two related articles—one focusing on the theoretical and comparative framework, the other on practical applications and edge cases. The epistemological challenges section (I.B) and the boundary between criminal/civil remedies section (I.C) could be condensed without loss of analytical rigour.*

### 2. Engagement with Counter-Arguments

While the author acknowledges the autonomy-based counterargument, the treatment could be strengthened. The position that psychiatric illness “compromises” capacity for autonomous choice requires more careful specification. Not all psychiatric conditions impair decision-making capacity equally, and the manuscript occasionally risks conflating diagnosis with incapacity.

*Recommendation: Add a paragraph explicitly addressing the heterogeneity of psychiatric conditions and their differential effects on decision-making. Acknowledge that some persons with diagnosed conditions retain full capacity while others with undiagnosed conditions may lack it. This would strengthen the argument that knowledge of the specific condition and its effects (rather than mere diagnostic label) should inform liability.*

### 3. Empirical Grounding

The manuscript would benefit from engagement with empirical literature on the relationship between interpersonal conduct and suicide risk. While Joiner (2005) and Van Orden et al. (2010) are cited, the psychological mechanisms linking abuse to suicide could be elaborated. This would strengthen the causation analysis by providing evidentiary foundation for claims about foreseeability and substantial contribution.

*Recommendation: Include a brief discussion of the psychological autopsy literature and studies on suicide precipitants in intimate partner violence contexts. This would provide empirical support for the normative claim that certain conduct predictably increases suicide risk.*

### 4. Treatment of Prosecutorial Practice

The discussion of prosecutorial discretion in England and Wales is well-developed, but the treatment of Portuguese and Brazilian practice is thinner. The claim that Brazilian criminal procedure operates on “mandatory prosecution principles” could be nuanced; the *princípio da obrigatoriedade* admits significant exceptions in practice, particularly through plea bargaining

(*acordo de não persecução penal*) mechanisms introduced by recent reforms.

*Recommendation: Expand the discussion of Brazilian prosecutorial practice or qualify the claim about mandatory prosecution to acknowledge recent procedural reforms that have introduced greater flexibility.*

## **5. Human Rights Analysis**

The human rights discussion (Section VI.D) is competent but somewhat perfunctory. Given the increasing significance of positive obligations under Article 2 ECHR (and analogous provisions in the Inter-American system relevant to Brazil), this section could be developed further.

*Recommendation: Consider expanding the discussion of Osman and subsequent jurisprudence to specify more precisely what the positive obligation to protect life might require in the context of private actor conduct precipitating suicide.*

## **6. Minor Drafting Issues**

- The abstract is somewhat lengthy (approximately 450 words); consider reducing to 250-300 words.
- Occasional repetition between the introduction and later sections (e.g., the comparative rationale is stated both in I and III).
- The term “close persons” is defined but then used inconsistently; sometimes “intimate partners” or “family members” are used interchangeably.

## Specific Technical Comments

1. The claim that “suicide remains a leading cause of death globally” is accurate, but the WHO figure of 700,000 deaths annually has been updated in more recent WHO publications (2023). Consider updating the citation.
2. The fourth edge case (Section II.A) discusses “substantial contribution” versus “but for” causation but does not cite *R v Pagett* [1983] or other foundational English causation authorities. Adding these would strengthen the doctrinal analysis.
3. Article 135(3) of Portuguese law is accurately described, but the author should note recent legislative amendments (Lei n.º 57/2021) that expanded the scope of psychological violence recognition within the domestic violence framework, which may affect the interaction between Articles 135 and 152.
4. The discussion of *autoria mediata* in Brazilian law is accurate, but the standard Brazilian doctrinal citation would be Cezar Roberto Bitencourt’s *Tratado de Direito Penal* rather than the sources cited. Consider adding this reference for readers familiar with Brazilian scholarship.
5. The characterisation of “liberal scholars” versus “vulnerability theorists” in Appendix D.1 is somewhat schematic. Not all scholars who emphasise autonomy reject vulnerability considerations, and the dichotomy may obscure more nuanced positions.

## Assessment Against Journal Criteria

Criterion	Assessment
Originality	Strong—addresses undertheorised area with novel comparative framework
Scholarly rigour	Strong—accurate citations, appropriate methodology, sophisticated theoretical engagement
Clarity of argument	Good—central thesis clearly articulated; some redundancy in presentation
Contribution to field	Strong—will be of interest to criminal law, comparative law scholars, and practitioners
Technical accuracy	Strong—doctrinal analysis is accurate; minor updates needed

Presentation	Adequate—length requires reduction; minor drafting improvements needed
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## Conclusion

This is a valuable contribution to an important and underexplored area of criminal law. The comparative methodology is sound, the theoretical foundations are sophisticated, and the practical implications are clearly articulated. Subject to the revisions outlined above—particularly addressing length, empirical grounding, and selective refinements to the counter-argument engagement—the manuscript merits publication. The work will be of interest to scholars working on criminal law, comparative law, mental health law, and domestic violence, as well as to prosecutors and judges confronting these challenging cases.

**Reviewer Recommendation: ACCEPT WITH MINOR REVISIONS**