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The Value of Life and Suicide

A Consideration of Normative Systems

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Preface

The issues in this thesis are of deep personal importance for me, owing to my personal experience. Therefore, some paragraphs may contain a personal consideration.

After working in the health sector with the elderly, I have learned to see how the value of life is closely linked with dignity. Many people hold a fear of reaching a stage where they can no longer tend for themselves, losing one's ability to rationally think and act. Being the master of one's own life, including the ending of it, serves a great amount of dignity. Although not having explicit experience in the mental health sector, nor working with younger individuals, I have recognized the extent of mental suffering and how strongly it can manifest in a person. This is not a discussion on euthanasia or assisted suicide, because those discussions are already active. This is for recognizing the manifestation of mental suffering and how strongly it links with value and dignity. The dignity in having control, concerning physical and mental suffering alike, the value in deciding how one wants to be remembered- ending life on a high note, or the indignity of being in a state of constant mental pain which is not acknowledged.

I want to thank my grandmother, for all the conversations we had about life and death. For the values you passed on, for your ability to think positively, be fair and hopeful. The memories of your last year's being institutionalized is part of what drove me towards this topic. Physical pain was not your hardest encounter, losing your abilities and sense of self, was. A sense of self that no longer manifested through your daily life. Seeing the grandmother I knew fade away, watching the calm, happy eyes which were once full of love, life, and hope- turn apathic. You did not want to be here anymore. You spent your last year's reminiscing about the life you had. A life you had lived, but now aged apart from. Life did not serve you like it used to do; it did not reflect the person you identified as. I felt a sense of relief when you passed, we all did. It was your time to go- it would have been long ago.

Furthermore, I want to thank my thesis supervisor, Ass. Prof. Iva Pushkarova, PhD, for being so patient and understanding with me throughout this process. I also want to thank the EMA academic team, especially Prof. George Ulrich and Dr. Orla Ni Cheallachain, for believing in me. Lastly, I want to thank all old and new encounters for cheering me on through this process.

Abstract

The thesis will be dealing with the question of whether the prevention of rational autonomous individuals in committing suicide is a violation of already existing human rights, and if so- how the upholding of such rights can better be aligned with the paternalistic duty to protect life.

The thesis strives to shed light on the potential legal, philosophical, ethical, religious, social, political and medical interpretation of those unfortunate circumstances in which suicide can be a rational and potential legally relevant human behaviour. Promoting suicide, or in any way trivialising acts as such, is categorically not the intention. It is only by acknowledging the rationality in certain suicidal individuals, that we can genuinely understand the value of life and adapt the current legislations in a way that it fully guarantees equality in rights and dignity. Hence, this research is also studying some links between the right to life with other rights relevant for the quality of living – privacy, liberty, dignity, equality. The research seeks to contribute to strike the balance between human freedoms as they are valued and understood in the modern European systems and the public interests of protection of the individual as a valuable and cared-for member of society. Conclusively, it will argue that cases concerning suicide have to be individually assessed. In the majority of cases paternalistic duties and protective legal instruments are required, but that does not account for leaving out those remaining cases in which paternalism might undermine individual autonomy which deserves public recognition and legal respect.

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Introduction

The thesis will be dealing with the question of whether **the prevention of rational autonomous individuals in committing suicide is a violation of already existing human rights**, and if so- how the upholding of such rights can better be aligned with the paternalistic duty to protect life. This will be dealt with through the potential **legal, philosophical, ethical, religious, social, political, and medical interpretation** of those unfortunate circumstances in which suicide can be a rational and potential legally relevant human behaviour. Furthermore, this research is also studying some **links between the right to life with other rights relevant for the quality of living – privacy, liberty, dignity, equality**. The research seeks to contribute to strike the balance between human freedoms as they are valued and understood in the modern European systems and the public interests of protection of the individual as a valuable and cared-for member of society.

The issue of suicide is a very complex issue which may be seen from different perspectives. Approximately 700 000 people die by suicide every year[1], which gives rise to the notion that suicide prevention is required as an important goal of each sensible government. Suicide is now widely decriminalised throughout the world[2]– a measure which all health ministers agree to have been effective upon approving the WHO Mental Health Action Plan for 2021-2030.[3] In fact, reductions in the number of deaths by suicide is how improvements in mental health are tracked according to the Sustainable Development Goals.[4] We can already detect a strong presumed correlation between suicide and mental health. A presupposed notion of suicidality being closely related to mental illness, inevitably subjects a suicidal individual to be an object of care and protection. A conception as such leaves perhaps not much room for those individuals whose suicidality is not synonym for mental illness, rather a final attempt aspiring for pain relief and a sentiment of dignity. Most strongly affecting those individuals who are rational in their decision for suicide are the preventive methods led by the mental health legislations, which leave the authorities entitled to forcefully detain people who appear to be of danger to themselves or others. Additionally, the paternalistic duties of medical professionals to protect and preserve life is conflicting with the autonomy of those who do not wish to be revived.

More recently the preventive methods for suicide tend to be justified by the perception of suicide as an irrational act which must inevitably be grounded in some form of mental disturbance, typically afflicting thinking, mood, motivation, and behaviour, thus a situation in which the individual becomes an appropriate object of care. A concept as such gives rise to the deprivation of liberty for individuals to act autonomously, thus be the absolute rulers of their own lives. It also gives rise to the unequal treatment of assisted suicide

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[1] United for Global Mental Health, 'Decriminalising Suicide: Saving Lives, Reducing Stigma', *Thomas Reuters Foundation*, 2021, p. 5.
[2] UNITEDGMH, 'Decriminalising Suicide', 2021, p. 5: there are about 20 countries who still treat suicide as a criminal offence.
[3] Ibid

for physical and mental illnesses because although the rationality in wanting to end one's life before it is becoming too painful and unbearable is recognized in the physical realm, it is not as widely recognized in the psychological realm. The prevailing psychiatric objection is thus that suicide is always a maladaptive action and that it counters to the sane interests of the patient because life under any circumstances is worth living, or if it is not, there are medical interventions available that can make it so.[5] **A rational decision, in legal terms, is thus conducted by a legally sane individual who is legally competent to take decisions.** Rational suicide is a dilemma not widely recognised by contemporary normative frameworks nor literature. Therefore, rather than aiming to provide specific answers and guidelines as to how to address this issue, **the thesis seeks to raise questions and thus launch a process of acknowledgement for rational suicidal individuals and their corresponding rights.**

The author does encourage protective measures as mental health legislations, especially for those more vulnerable such as mentally ill, thus does not seek to be critical in that aspect, rather acknowledging its utmost importance. However, **this research is concerned only with the prevention of rational suicide, meaning legally sane and competent individuals, and will therefore disregard any act based on irrationality.** The arguments provided anticipate interference with legally rational, autonomous individuals' decisions, arguing loss of dignity following a deprivation of certain rights, namely, the right to privacy, freedom from degrading treatment and discrimination, while considering that mental illness does not necessarily inflict irrationality upon a person.

According to the Universal Declaration of Human Rights (UDHR), all human beings are born free and equal in dignity and rights. Although, dignity is fundamentally a cornerstone of the UDHR- exactly what this entails is not clear. The concept of dignity is widely defined and can for this reason often be used as both supporting and opposing the same dilemma. In order for the principle of dignity in the UDHR to serve its purpose, we have to acquire a more specific sense of what it entails. To be certain that Article 1 of the UDHR applies to all human beings, we must investigate those cases where there is reason to believe that a breach might be identified. **Basis the findings procured during the research for this work nothing would suggest that much attention have been given to rational suicidal individuals,** especially the deprivation of rights in self-harm prevention, which is why this work takes it upon itself to scrutinize this issue.

Considering those people who do not have an accepted reason to die, those who are not suffering from a physical illness facing a foreseeable death, nor criminals eligible for a death penalty; for various reasons, they might be experiencing unbearable mental suffering with no remedy. Examples of the aforementioned might not want to participate in life any longer, deriving from their belief that death will serve them a greater amount of dignity than life at this point. Be it experiencing intense, mental pain, or at the polar opposite, apathy, their desire to be a member of society is no longer existent. Perhaps they are fulfilled and want to

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[5] Mayo, 'The Concept of Rational Suicide', p. 149.

end life while it's still serving them its purpose. Life may not be serving them in a way at all, neither in fulfilment nor dignity. For instance, if losing one's entire family, a lonesome continuation might seem meaningless, and even wrong. Yet, these people are expecting to carry on- because that is the right thing to do. **We have an obligation to the society, which is to be, unless the society grants you eligible to die.** Unless there is a socially justified reason to choose death, a decision made either by oneself or of the norms in society, one should engage in life. The very least one can do is participate, **one must BE for others to BE alongside us**. Thus, in an era of promoting self-determination, the very fundamental decisions of them all- to be alive or not to be alive, is generally not up to the individual. There is a multitude of norms, religious sanctions and general taboo concerning this- but there are also laws. One can be detained under mental health legislations if there is reason to believe that the mentioned will be a danger to others, which is justifiable- but also if there is reason to believe that there exists a danger to one's own self.

As human beings, we are all the result of different experiences, thoughts, ways of processing, tendency for anxiety etc.- ultimately, there is numerous different variables one can be made up of through different life situations. Thus, **we all are unique products of the circumstances in which one have lived through, and no one will ever completely be able to understand an individual's suffering-** it is simply subjective. Sometimes mental pain can be unbearable, and with detaining someone, robbing them for the possibility of an escape when there are no signs of remedy, could arguably at the very least be degrading, if not mentally torturous.

Overall, **the thesis will seek to identify the manifestation of the value of life through three main clashes of perspectives with the aim at demonstrating whether or not there is a differentiation to the ways and extent in which life is valued.** In debating the value of life through the different perspectives, this research aims to discern where the strong objections towards suicide stem from, and if it is justifiable to deny someone a death in dignity on those accounts, presuming that suicide can be rational. An investigation into possible violations of already existing human rights will be conducted, especially concerning the right to privacy, but also the right to liberty, freedom from discrimination and freedom from degrading treatment will be examined. Starting with the philosophical, religious, and ethical perspectives, **the first chapter** will provide a brief historical review of the said perspectives on suicide in order to both identify the value of life, but also if the value of life has been fluctuating through history. **The second chapter** takes the prevailing contemporary discourse into consideration while examining the value of life through a social, political, and medical perspective. **The third and final chapter** will exemplify the value of life through legal terms, using normative frameworks such as the Universal Declaration of Human Rights (UDHR) and the European Convention of Human Rights (ECHR), in addition to case law in order to identify any possible breaches to any of the human rights provided by the two conventions. **To conclude**, the thesis sums up its main arguments, before giving a provision of the findings in accordance with the research questions.

By investigating how the value of life is manifested through different normative systems, and whether there is a contradiction between them, the research seeks to explain why self-determination does not prevail over the most fundamental human principle; to be alive or not. Furthermore, after identifying the value of life through different notions, the main research question remains: **Is the prevention of rational autonomous individuals in committing suicide a violation of already existing human rights?** As the thesis will argue in favour of this statement, the following questions arise: Can preventing someone from an escape while experiencing severe, lasting suffering, be degrading, causing the individual stress in the form of humiliation and loss of dignity? Ultimately, assuming a positive stance to the above question, it would have to be considered whether we **should inflict limitations to the positive obligations of the state under Article 2 (the right to life) in order to uphold human dignity?**

By looking at the different aspects in which suicide can be scrutinized, for instance by looking at the historical development and by elaborating on certain cases, **the thesis is trying to outline the balance between two points of assessment, the personal viewpoint on one's own life as an individual, and the viewpoint of society.** This balance is especially prominent in the medical perspective, but also in other disciplines such as the ethical perspective. Even though an individual, through an ethical perspective, might claim to have the ultimate right to rule over one's own death, it is not exactly the case, because humans in society have the right to assess whether to accept someone's suicide as good or bad. In trying to compromise between these two types of decision-making, it is important not to mix or interlace them. As we do not take an individual's point of view and state that this should be the point of view of everyone, a viewpoint of the society does not necessarily oblige an individual to bind with it.

Limitations

This research **aims at going beyond the much-debated discussion of euthanasia and assisted suicide**. Euthanasia is defined as a physician's direct act of terminating the life of an individual based on a legally recognised decision, usually taken by an authorised person or institution under circumstances in which the persons themselves cannot take legally valid decisions. There are a lot of different practices under the term euthanasia, with the most prominent ones being active and passive euthanasia. Active euthanasia occurs when a physician injects a patient with a lethal dose of a drug in order to kill the patient, whereas passive euthanasia covers the withholding of artificial life support.

Assisted suicide, also known as physician-assisted suicide, refers to the assistance by a physician in providing the patient with the means to kill him or herself, such as sufficient medication.[6] Hence, a difference between euthanasia and assisted suicide lies in the legal relevance of the will of the person. With

[6] School of Medicine University of Missouri, *Euthanasia* [website], https://medicine.missouri.edu/centers-institutes-labs/health-ethics/faq/euthanasia, (accessed 3 August 2022).

assisted suicide, the individual takes a valid personal decision to end his or her life but needs assistance of a third person to accomplish it. Euthanasia is usually administered upon a decision of a third party who is authorised either by law or by the person him/herself, to take that decision under specific circumstances. Laws on euthanasia differentiate within the EU Member States, and currently only Belgium, the Netherlands and Luxemburg have fully legalized the practice.[7] Neither euthanasia nor assisted suicide will be explicitly discussed in this research, nor will be the withholding of treatment in order not to prolong an expected death. Therefore, cases concerning situations in which individuals are physically incapable of committing suicide themselves are outside the scope of this thesis. A debate as such would have to include a consideration of the rights and moral principles of other individuals involved, which is beyond the reach of this study.

This thesis will only be dealing with **rational suicides**, meaning those suicides conducted by a legally sane person who has taken a legally competent decision to end his or her life. Any suicides of the irrational sort, dealing with individuals not legally sane, goes beyond the scope of this thesis. Although, it is difficult to talk about legally sane individuals because in terms of suicide cases, such do not seem to be legally recognized. This thesis will operate under the notion that suicides committed by a person not legally sane cannot be subjective, because the individuals in question do not actually want to kill themselves, rather it might stem from some sort of disease or coercion which is inflicting their decision making. Whereas in a legally sane individual, the decision is rational because there is a motivation and a consideration behind it, leaving the individual to act autonomously. These are nonviolent, rational suicides driving from individual reasons which conceptualize one's own value and worth in order to promote personal dignity. Therefore, altruistic suicides, such as sacrificial suicides for the greater good, would also not be of particular concern in this scope. In addition, although the outdated concept of suicide as a criminal offence needs to be challenged, due to the restrictive parameters of the task, it shall not be discussed here.

Methodology

The study is based on the classic tools of qualitative analysis with an ambition to combine relevant knowledge and insights from different humanitarian disciplines. It is conducted in reference to literature from the historical, ethical, religious, philosophical, medical, and legal spheres. Normative frameworks such as the Universal Declaration of Human Rights (UDHR), as well as the European Convention of Human Rights (ECHR), with additional case law, have been used along with some national mental health legislations, especially the UK Mental Health Act of 1983. The thesis takes on a philosophical and ethical approach while reflecting on the breadth of the liability of legal and medical frameworks dealing with the issues of rational suicide.

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[7] European Union Agency for Fundamental Rights, *Requesting euthunisia* [website], https://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements-concerning-rights-child-eu/requesting-euthanasia, (accessed 25 July 2022).

Chapter 1: Philosophical, Religious and Ethical Understandings of Life and its Value Throughout History

When dealing with the very fundamental questions of life, such as life and death issues, it is important to take into account philosophical, religious and ethical perspectives. These normative systems are fundamentally concerned with the meaning, value and substance of life and living. Whereas philosophy provides a more overall and open-to-discussion understanding thus seeking to justify and explain the very system of beliefs about the world, religion deals with the questions of life in its transcendental aspects and connection to a higher source of power, meaning and validity, introducing more rigid concepts of right and wrong. Ethics deals with the moral principles distinguishing 'good' from 'bad' on profoundly personal level and is focused more on assessing the behaviour of an individual.

1.1. Philosophical Perspective

Philosophy seeks to understand the overall fundamental truths and is therefore an inevitable discipline to consider when dealing with issues surrounding life and death. It investigates the nature and significance of life and death.

There seems to be diverging attitudes towards suicide among the great thinkers of the Ancient Greece. Pythagoras condemned suicide because of the disruption it would cause to the natural harmony between the bodily possession and reincarnation of the soul. He believed that the soul, once assigned to a body, must pursue its atonement, and that the regulatory relations between body and soul would be broken by suicide.[8] Therefore, suicide would be a violation to the divine order of the repetitive circle aimed at fully purifying the soul, hence immoral. Although **Plato and Aristotle** held slightly different views, disagreeing to earlier currents on the thoughts of suicide, they both condemned the act, but rather as a violation to communal duties. **Plato** disapproved suicide with the exceptions of condemnation, painful or incurable illness, and in cases of disgrace that are beyond remedy, such as poverty or shame.[9] He believed that happiness was the supreme goal in life, the chasing of which suicide would evidently irrevocably cease. Plato further stressed the existence of an organic interrelationship between the individual person, the state, and the universe; thus, suicide would be a disregard of the state as well as an abandonment of one's duty to society and the divine order.[10] **Aristotle**, without any explicit exceptions to the rule, also recognized that life was not worth living at every price.[11]

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[8] D. Crone, 'Historical Attitudes toward Suicide', *Daqesne Law Review,* vol. 35, no. 1, 1996, pp. 11.
[9] G. Minois, *History of Suicide: Voluntary Death in Western Culture,* trans. L. Cochrane, Baltimore and London, The Johns Hopkins University Press, 1999, p. 45.
[10] Crone, 'Historical Attitudes toward Suicide', pp. 11-12.
[11] Minois, *'History of Suicide'*, p. 46.

Concerns for the natural law continued throughout the **Middle Ages**, led by the philosopher **St. Thomas Aquinas**. For Aquinas, suicide was unlawful – that is 'wrong' or 'sinful' – for three reasons: it is contrary to the human nature of self-preservation, it rattles the community, and it violates God's authoritative rule over life and death. **In the Middle Ages the suicide rates were detected to differ among social classes**, mainly because the upper class had many means of exposing themselves to death, thereby disguising suicidal tendencies, whereas the lower classes only had traditional methods at hand. Thus, an indirect suicide for sacrificial reasons, whether it was a sacrifice for love or defence, driven from anger or madness, was somehow honourable and altruistic- while the cowardice suicide of the peasant was purely one of despair and responsibility abandonment, hence egoistic.[12] These class-oriented interpretations seem to divide suicide depending on its moral motivation – it is valued when aimed at contributing to a greater common good and devalued when committed for egocentric reasons or simply moral weakness – but this also distinguished two moral notions of life. Life is not protected and valued as absolute and by no means the life of members of different classes is equal. This provides for an important insight – **for the Middle-aged person the social qualities of the human being (his/her social standing, superiority of class, education, and commitment to others, etc) influence the social value of his/her life**.

Although notions about suicide being disruptive to the natural harmony, an abandonment of one's duties to societies, thus something 'wrong' or 'sinful' seemed to be the predominant attitude in Europe throughout the Middle Ages, the question 'to be or not to be' alive became more openly debated in the early **Renaissance** and onwards. With the emergence of the **Renaissance and Reformation**, the prevailing opposition to suicide started to weaken. Despite that leaders such as Martin Luther and John Calvin still held on to the notion of suicide as immoral, other **scholars started to question the absolute condemnation of suicide, arguing that each suicide must be judged individually since in some circumstances it might be both justifiable and acceptable to God**.[13] Resistance from the authorities was still present, however this was a time when people started contemplating on questions regarding autonomy in self-existence.

The **Enlightenment Era** was accompanied by a rising religious scepticism and indifference through society. It was a time when scholars truly became divided on the notion of suicide, and the term 'suicide' replaced the previously used 'self-murder'.[14] The most prominent amongst the scholars were David Hume and Immanuel Kant.

Hume opposed the condemnation of suicide. He was against the recurring argument of individuals having duties to society and argued that obligations as such were reciprocal. Therefore, by withdrawing oneself from society, not receiving benefits from it, one could no longer be bound by its obligations. Arguing against the notion of suicide as contradicting the natural law, Hume noted that whereas society interfered

[12] Minois, '*History of Suicide',* p. 16.
[13] Crone, 'Historical Attitudes toward Suicide', pp. 20-23.
[14] Minois, '*History of suicide',* p. 3.

with the laws of nature consistently, this only seemed to be a problem when it came to suicide. Hume elaborated by arguing that preventing suicide would be as much of an interference with natural law as it would be to postpone the death of an ailed individual by treating their disease. Arguing that suicide would violate God's divine authority over life and death, and therefore would presuppose those individuals to hold special importance in the greater scheme of things, which to Hume was absurd.[15]

Kant saw suicide as self-contradicting, because using one's freedom to end one's life would in turn put an end to that freedom. Kant stated that we are not entitled to do as we wish with our own body and due to his further belief, that life clings to the living body, to him we are obliged to preserve life. Although, we could harm our body as long as we seek to preserve life, not to end it- for instance, cutting off one's foot to stop the spreading of necrosis. Even though self-preservation and the duty to live was of utmost importance to Kant, he did accept suicide for sacrificial reasons. Suicide, for Kant, was thus morally forbidden, however, in his view, holding on to life for all causes was not necessary.[16] Kant's verdict on what he considered to be most crucial, was for life to be honoured and preserved while endured.

Other scholars of the Enlightenment era have argued that not only does suicide cause deep sorrow to one's family, thereby does irreparable harm, approval of suicide would also make each individual the judge of one's own actions, and thus destroy public order, precisely because if an individual no longer fears death, one can also live as one pleases stemming from the fact that human punishment is not dreadful. This perspective will be deeper analysed when considering social and political perspectives on suicide.[17]

The dispute concerning suicide continued throughout the 17th and 18th century, with Hobbes, Locke, Rousseau, and Paine as principal representatives.

Hobbes held on to the notion of an individual's duty to preserve oneself, respecting the law of nature. Locke believed in the freedom and equality of individuals, however he also condemned suicide in the light of natural law. For Locke, the individual did not possess that sort of power over one's life.

The social contract theory, developed by Hobbes and Locke, was a theory in which people would come together with the means of agreeing to terms which would enable them to live peacefully together, and thus escape the chaotic state of nature. A natural state as such would be a state prior to any authoritative rulers or laws, a state in which every human tended for themselves, and in the necessity of life and preservation, anything was allowed. The social contract did not essentially involve any absolute ruler to enforce these laws, rather individuals would come together and agree upon certain rules, followed by them giving over their freedom to a chosen sovereign which would in turn enforce these laws. Hence, by collectively agreeing

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[15] Crone, 'Historical Attitudes toward Suicide, pp. 26-27.
[16] *Suicide and Kant* [online video], Presenter A. Dos Santos, Canada, 2021, https://www.youtube.com/watch?v=VnOnDfq5YME, (accessed 25 July 2022).
[17] Crone, 'Historical Attitudes toward Suicide', p. 29.

to follow laws and rules, individuals handed over the ultimate power to the sovereign- which made up the social contract. Without a sovereign as such, the state of nature was, for Hobbes and Locke, an inevitable outcome.[18]

In **Hobbes**' view, allowing individuals to be free and liberal in all senses, would bring us back to the outdated state of the natural law, a state which had no absolute ruler. He emphasized the need for an absolute sovereign with no higher power to it, because if individuals were to be sovereign over themselves, then a stately sovereignty would be pointless, thus the law of nature would obey once again. Therefore, he argued, we cannot accept people to be allowed to kill themselves. **Lester Crocker** explores a situation as such, when he states that allowing individuals to dispose of themselves, ergo not fearing death and thus neither fearing stately consequences, which in turn could be a threat to life; then what would stop us from disobeying other laws such as murder? Ultimately, this would lead to an overall abolishment of the social contract theory established by Locke and Hobbes.[19]

In contradiction to Hobbes, in **Locke**'s view the state of nature did have laws. However, there was no authorities making sure that these natural laws were obeyed, rather they were mainly held as moral obligations to God, obligations in which included the preservation of self. Consequently, these natural laws inclined that there was a belief in a higher power, namely God, thus- contradicting to Hobbes belief of the state of nature. For the natural law to persuade, there must have been a higher sovereign authority. The state of nature was therefore not, as in Hobbes view, a state of complete chaos. Only if the belief in God was lost, thus also obedience to morality, chaos would emerge. If so, would it even be possible for a state of nature to exist? Is it possible for humans not to believe in a higher power? Camus considers these questions in his interpretation of life and the rationality of suicide- an elucidation of this notion will follow shortly.

Thomas Paine shared the standpoint of opposing suicide, however for slightly different reasons than those claiming duties upon individuals or those fearing the re-emerge of the natural law. Paine's approach was more of an optimistic note, arguing that the strength of the self-preservation instinct is only so strong, not because death is terrible, but rather because life can be beautiful. Therefore, **for Paine, life was the only rational choice to make regarding the future**, because staying alive would bring opportunities for new paths which may lead us to happiness, in contrary to an absolute and final death.[20]

Albert Camus, the French-Algerian philosopher, and author of the famous essay "The Myth of Sisyphus", expounds on the philosophical aspects of suicide. For him, the reasons for which suicides are committed, are grounded in the same despair; the difficulties in accepting the ultimate absurdity of life, and how unreasonable existence truly is. If not adherent with any religious or scientifical theory which would provide

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[18] C. Georgiou, 'Ethics and Political Philosophy', *The Philosophy Vibe Anthology,* vol. 3, 2021.
[19] *Justice 02 Hobbes and Locke on the State of Nature* [online video], Presenter A. Beever, Auckland, New Zealand, 2020, https://www.youtube.com/watch?v=Ij_PebJwTNo (accessed 25 July 2022).
[20] Crone, 'Historical Attitudes toward Suicide', p. 42.

one with definitive answers to the fundamental questions in life, especially to the meaning of it, suicide might be alluring. **Suicides as such, are for Camus, the response to the absurdity of life, in which life is both meaningless, hopeless, and random**. Hanging on to hope and meaning are ways of disengaging from the reality of the moment. Therefore, we must recognize that life is capricious, it is indifferent to hope and meaning, and only the Absurd man will be capable of finding joy in the simple, repetitive, meaningless existence, without resorting to suicide as an escape.[21] Rather than trying to escape it, being lucidly aware of the absurdity of life and at the same time finding a relative type of happiness in it, is the most defiant response. Therefore, suicide is for Camus not a coherent response. In committing suicide, we agree with the ridiculousness and unreasonableness of life. Camus argues that once you reach a point where you can find joy in the minutiae, thus recognize that the simple task of being alive is already enough to fill your heart, soul, and mind- you do not need a grandiose meaning to saturate your life. **Freedom is accomplished when you recognize the value of life apart from any grand meaning or accomplishment- freedom does not lie in escaping life all together.**[22]

Here, Camus offers a description and understanding of the despair connected to the questions concerning the meaning of life, and how strongly it can be manifested within a person who is feeling discomfited while searching for these answers. Camus does not deny the absurdity of life, in contrast to the religions or other systems of hope, systems which are strongly integrated in the societies around us. Instead of escaping it all together, for those individuals whose reliance on religion or other forms of hope is not enough to explain the absurdity of life, he suggests another mechanism of response. Whereas suicide would be irrational because it would ultimately give into and agree with the absurdity, one should be aware of that possibility, and in that awareness, find fulfilment. Thus, **Camus is objecting to suicide not because he does not recognise the absurdity in which suicide might be a rational response, but rather because for him it is not a coherent response.**

Furthermore, philosophical theorists have presumed that a rational choice requires an element of knowledge of the options one is choosing between. Therefore, since the effect of death remains virtually unknown to men, death cannot be chosen rationally.[23] According to this theory, choosing life would also be irrational since one does not know the outcome of choosing death. Thus, when choosing between life and death one is obviously not guided by *knowledge* of the alternative options but perhaps by certain *attitude* to what is known and predictable. Then one may choose death not because it is preferable as a familiar alternative, but because life has lost all meaning.

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[21] *Albert Camus Lecture 1: Philosophical Suicide and The Absurd* [online video], Presenter E. Dodson, 2020, https://www.youtube.com/watch?v=nZIS9pC0Cm4&t=2s, (accessed 25 July 2022).
[22] *Albert Camus Lecture 4: One must imagine Sisyphus happy* [online video], Presenter E. Dodson, 2020, https://www.youtube.com/watch?v=3YeGOlZN_fg&list=RDLVnZIS9pC0Cm4&index=14, (accessed 25 July 2022).
[23] D. Mayo, 'The Concept of Rational Suicide', *The Journal of Medicine and Philosophy,* vol. 11, 1986, p. 150.

Although philosophical attitudes towards suicide have fluctuated throughout history, it seems to have shared a common value attached to dignity, an honourable life with the absence of lasting old age, pain, suffering and shame. The solutions to suicide-related questions seem to differ based on the relative value one attaches to aspects of life which makes it meaningful – duties to society in general and to other people, commitment to virtues which might be expressed both by keeping life and choosing death, having sinned (suicide as a self-punishment or redemption), etc. **It seems suicide is less strongly opposed in philosophical interpretations of the life of the individual as too autonomous, meaningless, socially detached or isolated, or too personal**. However, no philosophical approach encourages or recommends it as a solution to problems one faces in life. It would seem as if the emphasis in earlier ages was predominantly on the immoral act of suicide, rather than the preservation of life as we observe nowadays. Suicide was often affected so as to preserve one's honour, as opposed to being degraded by sickness, betrayal, or defeat which in some cases were viewed as totally inacceptable or unbearable and therefore incompatible with life. However, these justifications were increasingly devolving in exceptions. Society viewed suicide in general as a disgrace, the body of the diseased was carried through town in a derisive way, following by sanctions for the families of the deceased. Contemporary suicide acts are more concerned about the prevention of suicide and thereby the preservation of life- than for giving sanctions.

1.2. Religious Perspective

Religion provides us with a system of values which regulates the relationships between people and the divine, that which is found beyond the realm of the physical world. Religious morals idealize the meaning of life as an existential issue in which theology tries to give sense to that issue through notions about internal life, in order to explain and provide answers to the unknown, amongst which is found the question pertaining to death.

In religious attitude towards suicide, a division can be ascertained between **monotheistic and polytheistic religious morals**. **The more ancient polytheist religions are more indifferent and tolerant to suicide**. They value the survival of the group over the life of the individual, thus sacrificial suicides are more widespread in these religions. Another explanation for such indifference may also be the fact that the borderline between life and death is not as clear cut in the polytheistic religions, life and death is in a way interchangeable. The monotheistic religions however, changed the way in which the societies viewed the life of the individual. Most of the world's monotheistic religions, namely Judaism, Islam, and Christianity, traditionally condemned suicide as a mortal sin against the divine Creator.

The dominance of the Christianity in the Roman Empire after it had become the official state religion, served as a transformation in the cultural attitudes towards suicide, leaving the occurrence of suicide in the late Roman Empire and through the Renaissance and Reformation at an insignificantly low rate, which continued uninterruptedly until the rise of philosophic scepticism. Although, suicide is not explicitly

mentioned in neither the Old, nor the New Testament, the religions divine morality serves as the high ground for Christians views on suicide, propagating representatives of the orthodox community to condemn the act. With emphasis on the moral obligation to the natural law, and the interpreted inclusion of suicide under the sixth commandment "thou shalt not kill", Christians still recognized two exceptions to the rule; when performed through the justice of the state, ergo war or capital punishment, or by special intimation by God, as in the presumed case of certain Saints. Through this view, individuals themselves do not hold the authority to take their own lives.[24] This rejection of suicide also applied for cases in which the individual sought death to avoid a possible evil; '[you shall] rather endure all ills than consent to evil'.[25]

Having been given the gift of life from God, one does not own the right to take it away. Furthermore, the act of killing oneself may be distinguished from the sole act of killing, thereby being a misdeed under the sixth of the ten commandments by the Jewish law. Both from the Christian and Muslim view, individuals committing suicide will suffer in hell, for Muslims in particular, hell will manifest in the constant repetition of the individual's self-inflicted pain through the method in which the suicide was committed. In Hinduism, it is the fear of not being reincarnated, having your soul linger on earth in an inconstant form, that prevails as a discouragement for suicide. Similarly, for Buddhists, suicide is immoral because it goes against the fundamental principle of abstaining from taking life, in addition, they believe that the self-inflicted harm causes greater suffering then alleviating it.[26]

From a religious perspective, suicide has been seen as an act of refusing the very gift of God, thus taking away the almighty's all-encompassing power over life and death. An act which is considered highly immoral, insensitive as well as offensive. It was argued that the question was not whether to be or not to be, rather to exist to glorify God and make ourselves useful in society.[27] Thus, although suicide is habitually ascribed religious immorality, there are situations in which acts as such might be both promoted and celebrated. This is especially the case for polytheistic religions. The reason for this, is that the individual is not seen as the most valuable element of society, whereas the group of people is seen as the most valuable, hence its survival is crucial. The important factor distinguishing immorality from heroism in this sense, is the intent of the act. What Emile Durkheim has described as altruistic suicide, namely the act of killing oneself to serve a higher principle or the greater community, is celebrated in polytheistic societies. This is because these suicides are not driven by despair, rather as a selfless act towards the greater good. Letting go of life because of faith is different than letting go of life because of lack of hope. Evidently, from a philosophical and religious perspective, the value of life is not ultimately the highest value, hence life can be sacrificed to obtain higher values.

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[24] Crone, 'Historical Attitudes toward Suicide', pp. 17-20.
[25] Crone, 'Historical Attitudes toward Suicide', p. 19
[26] M. Schmalz, 'Why religions of the world condemn suicide', *The Conversation,* 12 June 2018, https://theconversation.com/why-religions-of-the-world-condemn-suicide-98067, (accessed 25 July 2022).
[27] Minois, '*History of Suicide',* p. 3.

Attitudes toward suicide in the religious perspective are prevailingly one of condemnation due to moral duties to a superior transcendent power in which individuals themselves are not authoritative. Exemptions to the condemnation transpire in cases where it contributes to the transcendent power of the sacrificial sort or to the society as a whole. Life is thus valued as something religion can manifest and provide meaning through.

1.3 Ethical Perspective

Although the ethical system is something that can be very personal, there are some common ethical norms which are binding for most members of the society. Likewise, although the question of suicide is something very personal, it encroaches upon the understanding of life as a general ethical norm. Therefore, it is important to elaborate on how the ethical system understands life, not only constrained by how the value of life is understood on a personal level, but also on a social level. Even though ethics are the science for good and bad in absolute terms, it is hard to find an absolute division with regards to suicide.

Margaret Battin, philosopher, and medical ethicist, argues that a right to suicide should not depend upon one's obligations to other individuals or the society as a whole, rather a right to suicide should depend upon its capacity to promote human dignity, that is, where the choice of death represents self-protection or protection of important values- not where death represents self-annihilation.[28]

Battin provides the **real-life case of an elderly woman, 'Elsie Somerset'** suffering from multiple diagnosis to serve as an example for when suicide prevention might contradict rights of dignity; 'Elsie Somerset', who was receiving chemotherapy for colon cancer as well as being almost blinded by glaucoma, was recently widowed. She had lived in a nursing home for the past two years, receiving strong medication for her pain. In order to save up for a lethal dosage, 'Somerset' suffered through 168 hours of interrupted pain while withholding her daily supplied pills. After swallowing the pills and falling into a coma, she was rushed to the hospital and revived. 'Somerset' was then taken back to the nursing home, still suffering from glaucoma and cancer.[29]

In discussion on whether there could be a right to suicide, Battin brings up two general strategies that have traditionally been used in attempting to solve this issue; the first being the denial of suicide as a right all together because of individuals' communal duties, and the second one which declares the right to suicide as prima facie right, a right in which certain circumstances could override. Considering the effects suicide is believed to have on others, particularly in emotional and psychological ways, this right is almost always overridden. Battin challenges the second account, stating that restricting suicide on the grounds of its bad consequences for others, ergo, obliging us to stay alive, might in turn oblige us to end our lives if the

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[28] M. Battin, 'Suicide: A Fundamental Human Right?', in M. Battin and D. Mayo (eds.), *Suicide: The Philosophical Issues,* St. Martin's Press, New York, 1980, p. 267.
[29] Battin, 'Suicide', p. 268.

consequences of it would be beneficial for the community**. Battin argues that the right to suicide is indeed a right, and rather than it being a liberty right, she claims it to be a right of the fundamental sort**, a claim which she is basing upon the notion that 'individuals have fundamental rights to do certain sorts of things just because doing those things tends to be constitutive of human dignity' [30], thus, precisely for this reason, that fundamental rights are rooted in human dignity, they are not equally distributed. The dignity of some might be promoted by the right to suicide, as in the case of the 'Elsie Somerset', whereas for others- having the right to suicide might undermine their dignity, in particular for situations in which they should be protected from themselves.[31] Therefore, **Battin suggest us to establish a procedure for sorting suicide cases into those which are constitutive of human dignity, and those which are not**, the first being a right of the fundamental sort, whereas the latter being an overridable liberty right.

While certainly a right to suicide in some instances can contribute to human dignity, all the more so, the deprivation of such right, thus the prevention of suicide where it is rationally justified, could arguably lead to a loss of dignity. A life in dignity can be explained as a life in which corresponds with one's individual, subjective values in life. An assertion of oneself in the world, meaning how one sees oneself, and how one would like to see oneself relating to, and in relation with the surrounding world, thus an affirmation of who and what one is. Depersonalization could be undermining dignity, as in illnesses, either mental or physical, which contradicts how you see yourself relating to the world, a situation which is not doing justice for the life or the person you relate to. **'I am what I have been but cannot be anymore'.**[32] Given the subjectivity related to loss of dignity due to its natural psychological factors, it can be challenging to assess when someone else are suffering a loss of dignity or not. Nevertheless, relying upon an entirely subjective standard in measuring a loss of dignity could potentially deprive exceptionally insensitive persons of their right to remedy.[33]

Sometimes suicidal people act in a matter of getting attention, as a cry for help, other times they act on a whim, being emotionally driven and spontaneous- and the intervention of the state is justified by the argument that the individuals does not really want to die. This is correct- even rational suicidal individuals does not necessarily want to die, it is not about death being desirable. Death is not desirable for anyone- most human beings would wish to live happily and fulfilled. A desire for living is a natural part of the human instinct of survival. There is nothing more the suicidal individual would rather want, than living a good life in the absence of pain. **A reason in which people commit rational suicide, is often because death is presumed more desirable than continuing to live.** The life they are living does not give justice to the person they are and the values they hold- therefore, in respect of their own dignity- they prefer dying. By

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[30] Battin, 'Suicide', p. 272.
[31] Battin, 'Suicide', pp. 270-272.
[32] Battin, 'Suicide', p. 277.
[33] Y. Arai-Yokoi 'Grading Scale of Degradation: Identifying the Threshold of Degrading Treatment or Punishment under Article 3 ECHR' *Netherlands Quarterly of Human Rights,* vol 21, no 3, 2003, p. 391.

intervening in decisions as such, in the few cases where individuals act rationally, is highly a matter that would be depriving them for their privacy. As seen in the case of 'Elsie Somerset'- having the authorities interfere in her decision, was for her a moment highly deprived for both privacy and dignity. We must recognise individuals as her, even though they are the minority. **Regardless of the fact that the majority of suicidal individuals do in fact need protection, there are cases in which an intervention of such decision could contradict the right to a private life, and the right to a life in dignity, autonomous decision making and freedom from degrading treatment.** Although often overlooked, these individuals deserve to be included in the scope of rights. When life does no longer serve these individuals in a manner acceptable to them, when the suffering is beyond saving, thus irreversible, then we must grant them a dignified death, similarly to those of terminally ill. Usually, in the medical realm, a dignified death is of much importance. There are normative, ethical frameworks in how to treat the dead and dying. While terminally ill are treated with the utmost respect, suicidal individuals are sometimes treated like criminals, through prevention and detainment. Justified through the principle **of paternalism, which constitutes an interference with a person of a group's liberty or autonomy as an intent to promote their own good-** these individuals are often robbed from an already undignified death, having to purposefully hide their final act of self-harm. **Suicide is not necessarily diminishing the value of life**, rather, suicidal people might value their life too highly for it to be lived out in a manner which does not align with their values, desires, identity, integrity, autonomy inter alia.

All normative systems based on ambition to explain and regulate the personal existence in relation to the physical and transcendental world and the relation to oneself and the others, value life. **The more absolute this value is, the more critical the view on suicide is**, no matter whether it is explained as morally wrong, socially irresponsible, ungrateful to God or simply stupid. As religious ban on suicide weakens, and commitment to individual freedoms rises through history, the views and explanations become richer and **the focus shifts from assessing the suicide as right or wrong to attempts to understand it personal and social phenomenology**.

Chapter 2: The Value of Life Measured Through a Social, Political and Medical Perspective

2.1 Social and Political Perspective

Throughout history, social and political views on suicide seem to depend on how duties to society have manifested as a recurring element. Suicide tends to be seen as immoral in terms of one's obligation to society as a whole, which may not be fulfilled in death.

By the social and political perspective, individuals are valued as part of the community. This means that we value the life of the individual because we value the individual as part of the society. Protecting the individual would therefore be in the best interest of the society. If we were to be indifferent about people killing themselves, the threshold for individuals to abandon their duties to society, by rather resorting to suicide, would be lowered. In turn, **the resilience of the society would be damaged, because people would be less motivated to help others, causing the prevention of suicide to suffer**. As a consequence, a disintegration of society would manifest as a practical issue. If we were to rely on Emile Durkheim's theory on suicide being a result of the disintegration of society, we will have ourselves a vicious circle.

Emile Durkheim identified what he believed to be a strong correlation between societal structure and suicide, more specifically within a lack of social integration. He based this argument on evidence of a rise of suicide in the 19th century shift between the traditional and modern society; whereas the traditional society had a high level of social integration meaning that people normally knew their place in society and how they related to others – this integration weakened with the emergence of the modern society, much owing to a decrease in religious importance and other traditional ways of thinking resulting in a weaker common consciousness and a less intense communal life. Individuals were thereby less bound to society without necessarily having a place in it- thus experiencing a problem with integrating thoroughly. Durkheim's proposed solution to this was to strengthen social institutions.

Joel Feinberg poses the paternalistic view on suicide when stating that the right to life is essentially a duty, similar to how the right to education inflicts a duty to attend school; however, it is expressed as a right because of the derivative claims against others, for them to save and not kill you, are necessarily beneficial.[34] Because it is argued that individuals hold duties to society, it is not a straightforward task to commit suicide. What these duties entail can vary from person to person, but normatively there's duties to the unofficial institutions such as your family, friends, to your closer community, then to the larger moral concept, you have a duty to live the life you have been given and do the best you can to serve the

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[34] J. Feinberg, 'Suicide and the Inalienable Right to Life', in M. Battin and D. Mayo (eds.), *Suicide: The Philosophical Issues,* New York, St. Martin's Press, 1980, p. 225.

community around you. For instance, permitting unjustified suicide cannot be in the public best interest, because it will deprive the population from its vital youth, in addition to leaving widows and orphans for the state to take care of. In order to be a holder of rights, and being a part of the society, seemingly, some duties follow.

As argued by **Battin,** if suicide were to be a liberty right, a right that can be overridden in cases were the exercise of such right would have a negative effect on others- it would in most cases be precisely so, overridden. That is because suicide is said to have an effect on other individuals, especially those with a close relation to the deceased- mostly in the form of emotional and psychological terms- but also in financial and social respects.[35]

For the sovereign state to function as intended, individuals cannot be sovereign over themselves. Being able to commit suicide might be an indication of such individual sovereignty and thus might damage the social structure. In order to make individuals obey, and to make the society safe and enjoyable for everyone, there are certain methods put in place to punish those not following the rules. These are in the form of sanctions and deprivations of liberty. If we were to accept that individuals could kill themselves at any moment, then punishment of such would not be that threatening. It would be easier then, for people to leave their responsibilities to society, in addition- people would be less motivated to help each other, and the preventative methods for suicide would in turn suffer. The value of life would decrease as a reflection of the moral and legal value of it. Hence**, if we were to be indifferent about suicide, then a lot of other functions of society would be harmed.** For this obvious reason, this thesis is not exploring an altogether abandonment of suicide prevention. As already stated, this thesis is concerned with the deprivation of liberty and in turn dignity in certain situation in which suicide is made unavailable.

In the normative discourse surrounding suicide, selfishness, weakness, and irrationality are recurring allegations of the individual in question. Rationality, in a social sense, is when the actions of an individual are subjectively justified, meaning that the individual in question knows why he or she is acting in such a manner. Third parties, assessing this conduct, may say that the individual's action is irrational, but that does not mean that it is not justified from a subjective point of view. Rather, the third parties deem it irrational because they do not agree with the justification. It might not be objective or befitting, thus, the conduct is deemed irrational in the meaning that it is unjustified. Nevertheless, **the contemporary raising of awareness concerning mental health, a discussion which has gained a lot of engagement and support, might be a start of a change to the discourse surrounding suicide all together**, moving away from a notion of it being acts of selfishness and weakness. The fact that the suicides of the two policemen followed

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[35] Battin,'Suicide', p. 269.

by their involvement in **the riot of the Capitol building** in 2021, was granted eligible for the compensations accompanying deaths in the line of duty, might be an indicator for a change as such.[36]

Although the Court inflicted no doubt to the fact that the death of the applicant's son by suicide in the ECtHR case of *Boychenko v. Russia* mounted to profound suffering for the applicant herself, it did not raise an issue under Article 3 of the convention (freedom from degrading treatment), where the applicant complained that her mental suffering amounted to inhumane and degrading treatment.[37] Thus, although it is socially recognised that suicide may influence and worsen the lives of the remaining family, this is not legally supported as a case in itself.

What one may consider as especially baffling, is how the conversation differs when comparing suicide to those dying from indirect, self-indulged harm, for instance those chasing the effects of adrenaline through questionable methods. What is different in this instance is the **intent of dying**, not the outcome of the actual death. The element of **guilt** might be of import here considering the left behind living, loved ones. Whereas the outcome in both cases is seen as a great tragedy, there is a consolation for the family of the adrenaline junkie, knowing that the individual died doing what he or she loved, however the individual dying from suicide is entirely seen as an unbearable sorrow and nothing else but a great misfortune. What is ironic, **is that the individual dying from the adrenaline stunt left behind a life he or she loved living, whilst the individual who died by suicide, freed him or herself from a suffering so unbearable that death was the best outcome.** Yet, knowing that the individual is now free from pain does not seem to offer much comfort to the loved ones left behind. It seems as if it is harder for the remaining family to live knowing that they did not provide the deceased with a worthy, lively, and content life- hence, they feel guilty. This increases the sensation of life being for those around us, we live to serve those around us, not ourselves, and potentially the meaning of our very existence is exactly that, everyone has the duty to live for, and please those around us. There is no individual will, essentially only that of the community- the greater good. We all only *are* in relation to others, we cannot be without being in relation to something else- an external factor for us to exist in relation to.

As argued above, there seems to be a perception of individuals having to stay alive for the sake of other people's feelings, especially feelings of guilt. This is logical if we think from a perspective where death is final, thus the individuals do not have the ability to feel once deceased. What seems to be of importance for the relatives of a deceased, is the intent behind dying. **If the death was intended, guilt would be a factor. The remaining relatives would in that case feel some kind of alienation- they might not fathom what went wrong or what they did wrong.** The parents of the deceased might feel like they failed their

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[36] R. Reilly and L. Caldwell, 'D.C. police officer's suicide after Jan. 6 riot declared line-of-duty death', *NBC News,* 10 March 2022, https://www.nbcnews.com/politics/politics-news/dc-police-officer-died-suicide-jan-6-riot-declared-line-duty-death-rcna19433, (accessed 25 July 2022).

[37] ECtHR, Case of *Boychenko v Russia* (2021) 8663/08.

responsibility as parents, and somehow performed their paternal and maternal duties to a sub-par level. **This might be why death by suicide is so much harder on the remaining family, than an unintended, yet tragic death.** This is similar to what might be the case of health workers or policemen if withheld from fulfilling their obligations, executing their duties to save and protect an individual, thus unwittingly letting the individual commit suicide. **Not only should an individual feel fulfilled in one's own life, but one should also exist in order for other people to feel fulfilled in their own relation to society.**

The value of life, or what is considered to be a valuable life, is changing in the contemporary discourse- especially with the rise of social media. Being always updated on everyone else, is leading to what is referred to as the **FOMO culture**; "the fear of missing out". Whereas the technological revolution in medicine led to a new expectation of the length of life, **social media might have brought about a new perception of the level of fulfilment in life.** A constant comparison of one's life to those of others, might have an impact on some individuals, feeling that their lives are not as fulfilled as they should be. Thus, this might be leading to a change in the expectations of life, thereby the perception of what life should provide has changed- creating a false sense of unfulfillment.

Jerome Motto suggests that we develop a realistic approach to suicide, where we must reduce the negative social implications attached to it, because only when the social institutions reflect awareness of, and concern for, our mentally and thereby provide means for improving it, the implied respect for life will follow.[38]

The prevalent modern understanding in most European societies seems to be that the individual is valuable. Although there is no period in history where life has been completely unvalued, the level to which the society validates personal autonomy has changed. **The society seem to pay more attention and validate more the personal attitudes towards one's own life, which in turn creates an attitude in the social and political perspective of more tolerance to suicide**, based on attempt to emphatically understand the motives for suicide. By trying to understand the motives of suicide, we actually seek the modern meaning of life.

2.2 The Medical Perspective

For medical practitioners, the ultimate goal is to save and protect life and make it as long and as fulfilled as medically possible. This is because medical practitioners are obliged to undertake an oath before starting practicing medicine, the **Hippocratic Oath**, which first and foremost preaches the importance of doing no harm. Basically, medical practitioners are required to do whatever in their power to rescue an individual, without inflicting harm. **There is no doubt surrounding the value of life in the medical perspective; physicians might also believe that the value of life can be further magnified.** The value of

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[38] J. Motto, 'The Right to Suicide: A Psychiatrist's view', in M. Battin and D. Mayo (eds.), *Suicide: The Philosophical Issues,* New York, St. Martin's Press, 1980, p. 217-218.

life is measured on the length and the quality of life, the level of fulfilment. What is considered healthy is being alive and wanting to be so, and suicide is seen as unhealthy. However, with this being a central argument against suicide in medical practice, one may reflect on whether suicidal individuals necessarily wish to die, or whether death is simply perceived as a better outcome. **It is possible to recognise a measurement of the value of life, not only in the lived life, but also in the interplay between life and death.** In the medical profession, life and death is thought of as opposites, while from an individual perspective- from the point of view of the individual patient – this might not be the case, rather, it might be linked. When we are dealing with the medical perspective, the individual is not simply a person who wishes to die. It is a patient, someone with medical issues and medical suffering. Medical suffering is different from moral suffering, social suffering, sacrificial suffering, and all other motives that have guided our suiciders in the previous perspectives above. **The very difference between the patient and all other people that commit suicide, is that the person here has a medical, physical suffering- and this medical suffering changes the value of life from the perspective of the individual, which is very personal.**

Additionally, **there seems to have been an important change in the value ascribed to life through the medical revolution, especially with the discovery of antibiotics**. The life expectancy rose drastically because conditions previously considered fatal, were now curable. There exists an old expression sourcing from this *much-appreciated* invention of penicillin, which in turn almost eliminated pneumonia along with a lot of other diseases. This expression characterized pneumonia of being 'the old man's friend', which refers to the escape, offered by pneumonia, before life deteriorates to an intolerable level due to old age. With the prolonging of life inventions in medical science, escapes as such have been vastly restricted and expectations of what life should provide, has changed. It has become longer, but also in certain situations more so unendurable. There is now much emphasis laid on the preservation of life, based on a notion that it would increase its quality and thereby value; the expectation of living a long, healthy, and fulfilled life is greater than ever, and so are the pitfalls. **Does newer technology, excessively preserving human life, intrude on our contemplative ability to reflect over the value and quality of life? If the main purpose becomes to preserve life to a feasible extent, are we then endangered to lose sense of what makes life qualitative?**

Even though suicidal thoughts are prone to be accompanied by some sort of mental imbalance, it does not necessarily deem the action irrational. **Justine Dembo, a psychologist, advocated the unpopular notion that mental illness can in fact in rare, but certain cases, be irreversible- thus akin to those of physical distinction.** Clearly, being terminally ill will most likely be accompanied by depression of some sort, yet, in the countries that allow it, it does not make them ineligible to assisted suicide- because they are not seen as irrational. Most people can recognise why a controlled death would be desirable in cases as such. Camus argues that we must find joy in the little things and embrace boredom, but intolerable pain both physically as

well as mentally, should not have to be embraced and celebrated, especially when considering human dignity.

As we have seen, the main argument against suicide in a medical view is the fact that it is often seen as irrational. According to **David Mayo**: *'people act rationally when they act in ways which on the basis of the best evidence available to them appear to be compatible with their fundamental interests'*.[39] From a medical perspective, the value of life is measured in health. **It is seen as a healthy desire wanting to stay alive, and thus- being suicidal is abnormal,** it restrains from what is considered normal through the human instinct and hence evolved to be considered a disease, besides in those cases justified by a foreseeable physical death. This presumed irrationality among suicidal individuals is highly manifested in the Mental Health Act,[40] which allows for the authorities to detain someone against their will if they are assessed to be a danger to either themselves or others. Whereas it might be true that the very human instinct raises from the fundamental task of survival- this is not precisely the issue here. Wanting to die, for no prominent reason, without any indication for difficulties in life- would be irrational. The crucial idea is that the suicidal individuals do not ultimately want to die. But **the life they are living might not give justice to the person they want to be or the life they want to have**. Death is not the goal, but it is the most desirable outcome. Of course, there are cases in which the act of suicide can be irrational, and individuals as such should be protected from themselves- but the core of the normative system protecting these should not deprive others from the autonomous right to act in alliance with their values and dignity.

As above mentioned, suicide can in certain cases be judged rational, but only if the circumstances behind it are commonly recognized as reasonable. Usually, situations as such entail physical illness, lawfully defined as terminal illness with a foreseeable death. **The most intrusive preventive measurement when it comes to suicidal individuals, is what is defended by the mental health legislations- the lawful act of detaining individuals against their will if presumed to be of danger to themselves or others**. Protecting people against harm caused by other individuals by detaining them is normal, it is a requisite to keep social order in check, thus agreed upon by the social contract. However, behind impeding someone from causing harm to themselves, lays a paternalistic approach of the authorities acting in the best interest of the individual, when the individual is assessed to not be able to tend for themselves. Suicidal individuals are predominantly seen as not being aware of their own wellbeing, thus acting in an irrational manner, which can be defined as acting in contradiction to their own personal values, and therefore must be protected.

The mental health legislations are important, because in many cases it is legitimate. There are a lot of individuals who can act spontaneously, irrationally- driven by strong emotions and being overwhelmed- **the problem arises when the legislation fails to differentiate between those who are in need for a rescue as**

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[39] Mayo, 'The Concept of Rational Suicide', p. 151.
[40] *Mental Health Act 1983* (MHA) section 136

such, and those who are not. A study using the most well-validated standardized capacity assessment tool (the McArthur Competence Assessment Tool for Treatment), established that 70-80% of involuntarily hospitalized patients with mental illness are capable with respect to treatment decisions,[41] although this can vary by diagnosis. Therefore, capacity must be assessed on individual basis. Subsequently, given that the quality of life can only be subjective; ***'we have no reason to think that decisional capable psychiatric patients' evaluation of their quality of life is more unreliable that that of other decisional capable patients'.***[42] Although paternalism is needed to some extent, there are cases in which paternalistic attitudes can act against its purpose, namely against the individual's best interest, even though acted upon with the best intentions.

Jumping off a bridge, does seem to be an abrupt, rushed decision and it might point to being ambivalent and emotionally driven. However, in obtaining the means for suicide, either be it ordering them online or withholding thus collecting one weeks' worth of medicine in severe pain, calls for a planned, thought through decision, a decision which, most probably, should be respected. A person being under the influence of alcohol or drugs, might also indicate to us an irrational decision, given that alcohol and/or other substances are known to inflict with our mental capability. A teenager with a sudden onset of contradicting and perplexing emotions is not likely to be rational. For reasons as the ones argued, suicidal people must be assessed individually in order to fully respect the values and dignity in play for one particular situation.

Battin argues that, if suicide were to be a right, it has to be a right that some people have, whilst other people do not. First and foremost, in order to distinguish and thus adapt appropriate measures for ensuring every individual's equality in dignity and rights, we have to come to terms with the fact that suicide is not always irrational. Those acting irrationally are already protected by various mental health legislations, who are ensuring the safety of those in danger of hurting themselves by means of a mental illness affecting their mental capacity, hence prompting their inadequacy for legal sanity and capabilities. The challenge will be with those acting as rational autonomous individuals whose dignity is conflicting with both the medical, as well as other state authorities, duty to keep alive. The onus of determining the time and place of death for a rational individual should in the end be their own to make in light of their own dignity and rights.

There is a prevailing distinction in the medical field between physical and psychological illness. The general idea is that only physical illness can be terminal because it has an inevitable power to end with a final, physical death. A physiological illness, on the other hand, will not naturally lead to death. The death of a physiological patient is not foreseeable, as the death of a physical patient could be. Further, the physiological illness cannot concretely be measured and proven. Mental illness is highly subjective. As a consequence of this, mental illness is often seen as less significant. Although there has been a rise of

[41] Dembo, 'For Their Own Good', p. 453.
[42] Ibid.

awareness for mental health in the recent years, it has often been dismissed as lunacy throughout history- proven by the amount of people stowed away in sanatoriums etc., even used as experimental objects. As a result of the lack of physical prof in mental illness, the pain it causes can more easily be undermined.

Although many people can recognise physical pain, having had similar diagnosis and hence, at least from what we can assume, experienced similar suffering. If you break a bone, or if you have a kidney stone- our physical bodies are all made out of the same substance and functioning in the same way- thus the range of physical pain that can be associated to the same physical diagnosis is limited. However, psychologically, we are all the products of our unique circumstances. We are all the products of a multitude of random experiences, and even though people may have had similar experiences in their lifetime- it is unlikely that the instances would perfectly coincide with one another. Even if two individuals grew up living the exact same lives- having the exact same interactions and being placed in the exact same situations- even then, although similar, their subjectivity would likely not be identical- because it depends on our genetic ability to access and cope with certain situations. **Thus, the mental state of an individual is rather complex, and highly unique- hence, one can never fully understand, nor measure, an individual's mental pain-** without literally being the person. What this research is trying to argue herein, is that although mental illness might not inevitably bring about a natural death, and that physicians cannot measure the stage and pain of the patient- it does not mean that the pain is not real and not significant. Human beings have a tendency to measure things, to make sense of situations, from their own personal point of view- because frankly, that is all we can do. With continuing to dismiss this large part of humanity, our mental state, we can no longer claim that we provide human beings with rights and dignity. Our mental state is so complex and important, probably more convoluted than anything else in life- and by dismissing such a large part of the human whole, we are not taking advantage of our full capacity.

One of the biggest obstacles in dealing with suicidal individuals and the stigma surrounding them in the medical perspective is realizing that mental suffering can be just as dire, some studies show even more so, than physical suffering. Most people having experienced both, state that they would rather endure physical suffering than mental.[43] **Dignity and rights cannot only be granted for the aspects of human life that can be seen and measured**, because behind what is seen and measured, there is a whole world, we might not fully understand it- but that does not mean it is not there, and that it does not need to be recognised. **A large study showed that only end-stage liver disease was subjectively as severe as mental disorder.**[44] Although, as previously said, pain in general is highly subjective- however it is more reasonable to assume

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[43] J. Dembo, 'We need to understand that psychological suffering can be unbearable, too', *Policy Options Politiques,* 26 February 2020, https://policyoptions.irpp.org/magazines/february-2020/we-need-to-understand-that-psychological-suffering-can-be-unbearable-too/, (accessed 25 July 2022).

[44] J. Dembo, '"For Their Own Good": A Response to Popular Arguments Against Permitting Medical Assistance in Dying (MAID) where Mental Illness Is the Sole Underlying Condition', *The Canadian Journal of Psychiatry,* vol. 63, no. 7, 2018, p. 453.

that human beings, made up from the same substance and anatomical functions, would experience physical harm similarly. **The reason in which mental suffering might be experienced as worse than physical suffering, might be exactly that of the inability to measure and prove it**. It is not concrete; hence it is not easily tackled. It is not the same as having a headache, knowing that taking an aspirin will be likely to put you out of your suffering within the next 30 minutes- even if it does not, you can go to the hospital where you will be treated with something more adequate. The uncertainty surrounding mental suffering, the alienation of it not being measurable, not proven, not something concrete you can fix, not physical- is making it more alarming and enduringly painful. Exactly for this reason, knowing there is a possibility for escape, might make it easier to cope- as with the aspirin for headache.

Knowing that there can be an end to the suffering, it may not be a desirable end, but if it ever gets so intolerable, that there is an end- might encourage people to hang on. Having a sense of **control** over the situation could arguably make most things easier. This applies to a plethora of matters, including physical pain. An individual in the water, struggling with hypothermia, but knowing that help is on the way- is likely to fight and hang on stronger to life, than one that does not see an end in sight. The same goes for mental suffering, knowing there is an option to escape might be exactly what you need to keep going. Leaving the door open does not equal to pushing someone through, rather it can give a sense of relief, more room for breathing. This is why the detention under the Mental Health Act can be a problem. By detaining someone, physically robbing the individual from this possible escape- might make the suffering ever so nondurable. The Mental Health Act allows state officials to detain individuals who are a threat to themselves or those around them. Although vital in certain cases, we must recognise some moments as matter of privacy, in which interference as such would be both degrading and undignifying. Whereas the death of mentally ill cannot be proven reasonably foreseeable, enduring mental suffering can presumably lead to suicidality in which death could be argued as possibly being foreseen beforehand, although the difference here is that terminal illness is irreversible, nothing can be done, while suicidality is not absolute- at least not in the normatively medical perception.

There are especially **paternalistic professions** in which certain individuals have taken on the duty to protect the remainder of society. Choosing an occupation such as medical professionals or police officials, with the goal of protecting the life of individuals, entails a certain amount of occupational pride and individual satisfaction- what could be referred to as professionalism, where the values of your occupation align with your personal values. Everyone is looking for a meaning of life, and for these individuals- a meaning as such might be to save and protect others. By succeeding, they might experience feelings of achievement and thereby worth. Providing meaning to someone else by being the object of care, letting someone rescue you in order to satisfy their individual need of meaning, worth, absence of guilt, brings us back to the recurring arguments of staying alive for others to coexist with us. Every individual must take part in order to fulfil each other's need of worth and meaning. Individuals are fulfilling each other, and thus we are valued. The

value of life is only achieved by existing in relation to someone else. Although, this might be insignificant on an individual level, because in the grand scheme of things, these professionals have undertaken an oath to the state, in which they pledge to serve in the best interest of their coexisting individuals. There is a medical consensus in differentiating between weak and strong paternalism, whereas the weak paternalism is used to override the wishes of incompetent patients, strong paternalism is overriding a competent individuals' choices in order to serve the individuals own good.[45] **By not neglecting the paternalistic state, which has the right to interfere in the life of the individuals for the intent of promoting their own good, but rather narrowing the scope of its protection, in turn encompassing that some cases non-interference is in the best interest of the individual, would be beneficial for promoting human dignity.**

Circling back to the oath of the medical professionals the occupational pride might include the urge of saving everyone, but because of the natural scheme of things, an inevitable death of the terminal ill must be accepted in the physics realm. However, whereas mental illness does not bring about a natural death, the idea that mental illness might be irreversible has generally been neglected by psychologists. While arguing for MAiD (medical assistance in dying) for mentally ill individuals, **Justine Dembo is one of the few psychiatrists who recognizes the irreversibility of mental illness; '*We accept the fact that modern medicine cannot alleviate all suffering in the physical realm; I worry when psychiatrists cannot accept this fact in the psychiatric realm.*'.**[46] Dembo does not dismiss the fact that not everyone with a mental illness is capable of decision-making, and while stressing the fact that most mental illness is treatable, she does acknowledge that, unfortunately, this is not the case for everyone; ***'we cannot help everyone to the point where they find their quality of life to be acceptable when they assess it themselves'***[47] for the reason of this being a subjective assessment, something only the individuals themselves can know. However, Dembo highlights the importance of eligibility requirements and procedural safeguards while dealing with MAiD, including the absence of coercion, for the illness to be irremediable, meaning that treatments have been tried without giving the patient sufficient relief, additionally that the suffering is enduring, beyond emotionally driven impulses. Further, the patient must be considered capable, meaning that he or she has the ability to understand all facts relevant to the decision. **Dembo does not disregard the importance of suicide prevention; she simply states that this has to be done in a manner where the honour and wishes of persons who suffer unbearably from severe illness is still being respected.**

Moreover, allowing someone to commit suicide as a medical practitioner, might lead to a problem in respect of **liability**. In the US, the most frequent lawsuits of malpractice are those against psychiatrists arising from patient suicide.[48] A fear of being held liable might contribute to the paternalistic interventions of medical

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[45] Dembo, 'For Their Own Good', p. 452
[46] Dembo, 'We need to understand that psychological suffering can be unbearable, too'
[47] ibid.
[48] A. Ho, 'Suicide: Rationality and Responsibility for Life', *CanJPsychiatry,* vol 53, no 3, 2014 p. 142.

practitioners and other responsible authorities, especially affecting those individuals in the interplay between the right to autonomy and the right to life.

Acknowledging the undue suffering of some mentally ill**, Dembo argues that patients who have undergone many years of unsuccessful treatment are not necessarily irrational when they feel like recovery is unlikely and might consider other measures for pain relief**.[49] The presupposed vulnerability of mentally ill in the medical realm fuels a vicious circle of incapability, candidly, classifying people as vulnerable in turn denies them respect and removes the agency of a large group of diverse patients, including those capable of decisions. This highlights the importance of assessing rationality and capability on individual basis.

In the famous Canadian case 'Adam Maier-Clayton', a young man was advocating for the rights to die in Canada. He was legally sane, but had suffered severely mentally for years, putting to the test just about every treatment and medication on the market. Under the Canadian legislation**, Clayton was not eligible for medical assistance in dying**. The scope of Bill C-14 from the Canadian legislation excludes individuals who are solely suffering from mental illness without also being terminally ill.[50] This led Clayton to take his own life. *'Every Canadian deserves the right to have the ability to terminate pain that is chronic, incurable'.* [51] Clayton had told the Canadian press a year prior to his passing. The question here, however, treats the issue of pain which potentially can only be terminated together with life itself. The one who is suffering tend to see only the suffering, he does not see any other value. Nevertheless, the people who are not suffering are not obliged to take on the same approach, thus the state might see Clayton's life as valuable even though there is suffering. Therefore, it is so dangerous to allow the suffering individual to be the only one to take the final decision of terminating life, which is why it is risky for the state to comply with whatever decision an individual make. **An interference of the state is not necessarily touching whether the individual is mentally healthy or not, it is rather whether the only perspective from which the individual understands life, is suffering or not.** The case of Clayton serves as a typical illustration to the **complexity** within the problem. The medical professionals are bound both to preserve life but also to make life valuable and healthy, without suffering- which is not an easy task when preserving life means preserving pain as well.

Although the thesis may argue that an excessive prevention of rational suicides might be inordinate, it is important to recognise the **distinction between refusing to assist someone in committing suicide, and to force someone to live.** The state will simply not assist a person wanting to end their life, but that does not mean that the state is forcing one to live in pain. There might be some cases on individual basis, as for the

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[49] Ibid.
[50] An Act to amend the Criminal Code and to make related amendments to other Acts: medical assistance in dying 2016 (C-14)
[51] S. Hughes 'Adam Maier-Clayton's controversial right-to-die campaign', *BBC News,* 19 July 2017, https://www.bbc.com/news/world-us-canada-40546632, (accessed 25 July 2022).

case of Clayton, when a person strives to kill himself without receiving assistance from the state. **The reason in which the state does not want to assist in such cases is because the individual does not simply need assistance**. Because precedence is very dangerous, the state must consider each case within the perspective of every case. On basis of such approach in which the state decides whether someone needs assistance or not, the state decided against assisting Clayton in his request for suicide. This is because the state did not owe assistance to Clayton in his situation, the state was not obliged to give him assistance because he did not fall within those exceptions where the state give assistance. Yet- this does not mean that the state is forcing Clayton to live in pain, it only means that the state simply will not assist him in whatever means he wished to find in ending his pain. **The state can do whatever is necessary to lessen the pain within the medical perspective in giving medical assistance while living, but to leave life and end pain in such a way will not be assisted.** The state does not force someone to live in pain, simply, the state does not take a life which is seen as valuable despite the pain. Compelling anyone to live in pain is forbidden under the European Convention Article 3 (freedom from degrading treatment), which obliged the state to fight against undignified living. The state, including the police and medical personnel, have an obligation to preserve life, and if one wants to end life one should do that despite the resistance of the state. The state has a duty to preserve life because life is valuable. The state value life, therefore, the state values the lives of everyone, which is why the state will always try to withstand from assisting anyone in ending life, exempt from a rarity of exceptions. **It is up to the individual to kill oneself in a way that circumvents the state policies.**

Simultaneously, **Clayton's story could potentially serve as an example of how restricting suicide can be both degrading and undignifying**. Being forcefully prevented from committing suicide, Clayton was not only denied the chance to die with dignity and without suffering, but it could also be argued that he was robbed for his right to respect for privacy and family life. Along with a professional duty of the police to protect the right to life, with that including preventing people to cause harm to themselves or others, under the mental health legislations, individuals in danger of such actions can be detained against their will given that they have a mental illness.

Chapter 3: The Legal Protection of Life

The right to life is central in the system of fundamental right of the human person. It is linked to other rights that are also fundamental, but not necessarily absolute, which relates to the quality of life. These connections will be explored further in this chapter.

3.1. Right to Life

The right to life as declared in Article 2 of the ECHR is an absolute right which is interpreted by the ECtHR in its practice as one of the most fundamental provisions in the Convention, one in which in peace time admits of no derogation under Article 15 (Derogation in time of emergency). The right to life enshrines one of the basic values of the democratic societies, together with Article 3 (freedom from torture). The state obligations under the right to life two substantive obligations: the obligation to protect by law the right to life, and the prohibition of intentional deprivation of life. It also contains a procedural obligation to carry out an effective investigation into alleged breaches of its substance.[52]

The right to life also includes **positive obligations** of the state to safeguard the lives of those within its jurisdiction through providing a regulatory framework and taking preventive operational measures, which inclines stately interference in the context of any activity, whether public or not, in which the right to life may be at stake. The positive obligations of the state thus arise in different contexts, one of which are the protection of persons from self-harm. The Court holds that Article 2 may imply in certain well-defined circumstances a positive **obligation of the authorities to take preventive operational measures in particular circumstances to protect an individual from self-harm**, in which there are general measures to diminish the opportunities for such, without infringing with personal autonomy. These positive obligations are what give rise to the preventive measures concerning suicidal individuals such as the mental health legislations and the medical obligations in preservation of life.[53]

Mental Health Legislations give basis to the law allowing involuntary detention if a person appears to be suffering from mental disorder and to be in immediate need of care or control, of if it is necessary for the protection of other persons.[54] For obvious reasons, a suicidal individual serves as a treat to him or herself. Though, a social and political perspective might argue that the act of suicide is both harmful to oneself **and others**, and thus strengthening the justification for an intervention under a mental health legislation.

Evidently by law, life holds an absolute value. There is nothing more legally protected than life; this is shown by the universal right to life, which is one of the few absolute rights. A right as such can primarily never be restricted, unless it interferes with other people's right to life, in which a proportionality assessment

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[52] *European Convention of Human Rights 1950* (ECHR) Art 2.
[53] ibid.
[54] *Mental Health Act 1983* (MHA) section 136 (1)

might be in order. In addition, the legal value of life is manifested through the wide ratification of the abolishment of the death penalty. However, it has not always been like this. Not until after the second world war, with the emerge of the Universal Declaration of Human Rights, was the value of the individual legally recognised.

Professor in law, **Robert M. Byrn** has articulated four objections to suicide: it is unnatural and therefore undeserving of the law's protection; it devalues human life by constituting aggression against life which is unlawful considering life being unalienable; caring for human life and happiness is the only legitimate function of government, thus every human being is under the protection of the law and cannot be lawfully taken by any other than the legal authority itself, and lastly; suicide might encourage others to do the same.[55]

While arguing against the prohibition of euthanasia, **Tsvetomir Todorov** states that if engaging in acts such as volunteering where the likelihood of death is significantly higher than normal, e.g., giving blood or donating organs, is accepted under the right to life, then there are no reasons for arguing that a person cannot freely decide to end his or her life. This is because, freely engaging in situations which may threaten your right to life, constitutes a 'de facto' harm to this right. The subjectivity of the right is taken away, meaning that it can be exercised in its full capacity in a manner that does not infringe with the rights of other members of the society. Contradictory, by volunteering, the right is taken away from you in order to uphold other people's right to life, ergo turning the subjective right into a legal obligation, allowing only the disposal of the right to life in the public interest.[56]

3.2 The Right to Privacy

The right to privacy is proclaimed in Article 8 which states that everyone has the right to respect for his private and family life, his home, and his correspondence, in which there shall be no interference by a public authority. The primary purpose is thus to protect individuals against arbitrary interference. However, it is a qualified right, meaning that in certain cases it can be limited. Under the second paragraph of the right, these limitations are listed as permissible if necessary: a) to protect democracy in the interest of national security, public safety or the economic well-being of the country, b) for the prevention of disorder or crime, c) for the protection of health or morals, or d) for the protection of the rights and freedoms of others.[57]

Before checking the legitimacy of a limitation, we must ensure that the prevention of rational suicide accounts for **an interference with the right to privacy.** There has been some uncertainty surrounding what

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[55] A. Sullivan, 'A Constitutional Right to Suicide', in M. Battin and D. Mayo (eds.), *Suicide: The Philosophical Issues,* New York, St. Martin's Press, 1980, p. 242-243.

[56] T. Todorov, 'Евтаназията – производно право на достойна смърт?', [website] https://www.challengingthelaw.com/medicinsko-pravo/evtanaziata-pravo/ (accessed 31. July 2022).

[57] *European Convention of Human Rights 1950* (ECHR) Art 8(2).

constitutes privacy under Article 8 of the ECHR. The Human Rights Council have offered an interpretation of privacy as something that includes a:

> presumption that individuals should have an area of autonomous development, interaction, and liberty, a 'private sphere' with or without interaction with others and free from State intervention and free from excessive unsolicited intervention by other uninvited individuals.[58]

As much as the right to privacy encompasses autonomy and self-determinations on matters of sexual identity, personal relationships, personality, and appearance- whether a private sphere as such included end-of-life decisions has not been clearly stated, however, one can argue that there is little more private than end-of-life matters.

We have to consider whether the suicide of an individual would pose a threat to the democracy in the interest of national security, public safety or the economic well-being of the country. If looking through the previously discussed perspectives on the value of life and how suicide would pose a threat to it, considering individual duties to society and health being defined through a desire to be alive, we would find the limitations presented under the second paragraph of the right to privacy justifiable for an intervention under the protection of democracy, social security, health and morals, and the right and freedoms of others- however, if applying the proportionality test, balancing the right of the individual and the interests of the state; the rational individual being kept alive in contradiction to his or her wishes, in a degrading and undignified manner, possibly in pain- would suffer to a much greater extent than the society would from losing the particular individual.

Most countries have decriminalized suicides, yet, although technically legal, the focus has shifted from sanctioning suicide to preventing suicide; justifying the authorities to intervene and deprive individuals from their liberty and autonomy. In questioning whether governments can lawfully restrain **competent individuals** from committing suicide, **Alan Sullivan** argues that a decision to live or die should be treated as a personal choice protected by the right to privacy, and that governments have no legitimate interest in preventing the suicidal individual unless it is affecting others. Hence, rather than preventing competent suicide, the paternalism of the state should be concerned with ensuring that a person right to choose is free from coercion, mental instability, and ignorance, thus, the courts objective should be to protect the right to choose by ensuring the subjects ability to do so.[59] [60]

ECtHR case law following Haas v. Switzerland §51 articulates that an individual's right to decide the way in which and at which point his or her life should end is one of the aspects of the right to respect for private life

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[58] UNHRC, Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Martin Scheinin, 2009 para 11.
[59] A. Sullivan, 'A Constitutional Right to Suicide', p. 231-232.
[60] Sullivan, 'A Constitutional Right to Suicide', p. 245.

within the meaning of Article 8, however only provided that the person is in a position to freely form his or her own judgement and to act accordingly.[61] Even though the court did not find the Swiss authorities to have breached an obligation in this case, it did assume a positive obligation of the states to take measures to facilitate suicides in dignity.[62]

In the ECtHR case Pretty v. UK case, the court considered the quality of life as significant under Article 8:

> The very essence of the Convention is respect for human dignity and human freedom. Without in any way negating the principle of sanctity of life protected under the Convention, the Court considers that it is under Article 8 that notions of the quality of life take on significance. In an era of growing medical sophistication combined with longer life expectancies, many people are concerned that they should not be forced to linger on in old age or in states of advanced physical or mental decrepitude which conflict with strongly held ideas of self and personal identity.[63]

The right to privacy also concerns **family life**. Given the difficulties in determining the absence of coercion or any form of provoking matters which the family members of the individual committing suicide might be accused for if present, it is better for them to stay away. If the suicidal is acting rationally, and the justifications for the suicide, although unfortunate, is understandable and thus supported by the family, it would be a contradiction to the right of sharing a private, intimate moment with one's family, a moment which, depending on one's values and circumstances, could have contributed to the notion of a dignified death.

Moreover, what is interesting to consider from a humanitarian perspective, is why Clayton was requesting the state for assistance in killing himself although he would be capable of doing so himself. **A stately assistance in dying would give rise for a more dignified death because of the very circumstances in which the killing would take place**. It would be done in a more open, controlled, and perhaps less painful manner. If the suicide was stately approved, one's family would not have to fear prosecution if present during the time of death, thus one could make enjoyment of a more private moment with respect to family life, as guaranteed under Article 8 (right to respect for private and family life). A similar instance is found in the ECtHR case of Gross v. Switzerland[64], in which an elderly lady had wished to end her life in the absence of any clinical illness. When the state refused to assist her, the applicant complained that by denying her the right to decide by what means and at what point her life would end, the Swiss authorities had breached Article 8 (right to respect for private and family life) of the ECHR, an accusation in which the court initially judged admissible.

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[61] ECtHR, 'Guide on Article 8 of the ECHR', 2021, p. 39.
[62] *Case of Haas v Switzerland* (2011) 31322/07
[63] *Pretty v. UK* (2002) ECtHR para. 65.
[64] ECtHR case of Gross v Switzerland 2014 67810/10

3.3 Freedom from Degrading Treatment

Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment acknowledges that:

> Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman, or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.[65]

According to the European Commission, degrading treatment is treatment that: **a) humiliates or debases an individual, b) showing a lack of respect for, c) diminishing their human dignity, d) arouses feelings of fear, anguish, or inferiority capable of breaking an individual's moral and physical resistance**.[66] In order to qualify as degrading treatment, the prevention of suicide has to amount to either one of these definitions. Let us delve into the definitions in accordance with the cases of Adam Maier-Clayton and 'Elsie Somerset', which are two very different cases of suicide: a) Clayton was streaming a live video while hiding in an unknown location prior to his suicide attempt, he wanted to give a final statement. The fact that he was prevented, thus having to repeat it all on another location, could be amounting to humiliation. For 'Somerset', suffering in severe pain for 168 hours, for nothing, could be assessed humiliating as well, b) there were a lack of respect in both cases considering the fact that their ultimate decision was not being respected; whereas Clayton was interrupted and prevented before he could attempt suicide, 'Somersets' revival was in complete contradiction to her wishes, c) a diminishment of human dignity is more difficult to detect because of the divergent applicability of the term, however, denying them the right to suicide was inflicting them both to continuous suffering, backed by their medical history, d) in both cases, the individuals were subject to anguish and inferiority, left in pain and suffering while being inferior to do something about it.

Degrading treatment in the cases of Clayton and 'Elsie Somerset' was not purposeful, rather the act was made in belief of what was in the best interest of the individuals. However, in contrary to torture, cruel, inhumane, or degrading treatment does not have to be inflicted on purpose in order to fall under a violation of Article 16 of CAT.[67]

Article 3 of the ECHR, the prohibition of torture and inhuman treatment, is similarly to Article 2 (the right to life), ranked as an absolute right. Whereas most human rights recognise some limitations in which they can be waived, often for the purpose of protecting the right of other people, the prohibition against torture

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[65] UN Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment (CAT) art 16.
[66] Migration and Home Affairs, 'degrading treatment or punishment' *European Comission,* [website] https://home-affairs.ec.europa.eu/pages/glossary/degrading-treatment-or-punishment_en (accessed 31 July 2022).
[67] CAT art 16

recognise no such cases. The prohibition against torture is even more unconditional than the right to life, because whereas the right to life can be restricted when taking into account other people's right to life, torture and degrading treatment can never be justified under any circumstances, not even in times of war- where the right to life is conditional. It is made clear by the Council of Europe that such absolute prohibition, as seen with torture and degrading treatment, applies equally to the treatment of persons detained on medical grounds. Although it is up to the medical authorities to decide, based on recognised rules and medical science, for the best treatment of patient's incapable of deciding for themselves, these patients nevertheless remain under the protection of Article 3, which permit of no derogation.[68]

As in the ECtHR case, Bataliny v. Russia, the court found a violation of Article 3 (prohibition of torture) of the ECHR on basis of degrading treatment, where the applicant was forcefully subjected to involuntary hospitalisation and psychiatric treatment, in which the hospitalisation was justified in view of the applicants attempted suicide. However, the court did not find any evidence of the applicant's mental state following the suicide to be under the definition of a 'severe' mental disorder which would require involuntary psychiatric treatment. Assuming that the involuntary treatment must have aroused feelings of fear, anguish and inferiority of the applicant, the court concluded in favour of a violation to the freedom from degrading treatment.[69] In this instance, the court also found a violation of Article 5 § 1 where the procedural safeguards related to decisions authorising a person's involuntary hospitalisation was not met.

In the ECtHR case of Pretty v UK, a refusal of granting immunity from prosecution of her husband in assisting her in her suicide amounted to a failure to protect her from physical and mental suffering, which would constitute both degrading and inhuman treatment within the meaning of Article 3.[70]

Moreover, the fact that elements of degrading treatment consist of psychological factors relatively arising in the subjective response of the victim, makes it difficult to objectively verify acts or conditions to be degrading. Thus, it is hard to draw a distinction, under ECHR Article 3 (freedom from degrading treatment), between maltreatment which is causing degradation and maltreatment which is not causing degradation. could be hard to draw.[71]

3.4 Freedom from Discrimination

Article 14 in the ECHR (prohibition of discrimination) provides protection from discrimination in the enjoyment on any of the human rights set out in the Convention.[72]

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[68] CoE, *'Human Rights handbooks no 6: The Prohibition of Torture',* 2002, p. 21.
[69] *Case of Bataliny v Russia* (2015) 10060/07
[70] Arai-Yokoi, 'Grading Scale of Degration' p. 401.
[71] Arai-Yokoi, 'Grading Scale of Degration' p. 390.
[72] European Convention on Human Rights, 1980, art 14.

Rights to euthanasia and assisted suicide discriminates between patients with a physiological condition, which might include a psychological element, and those patients solely suffering from a mental illness. Why this is problematic has been discussed under the medical part of this thesis. However, it is not only in the euthanasia debate patients are being discriminated. Also, if we investigate different mental health legislations, they tend to ultimately treat any suicidal being the same; assuming an inevitable presence of a mental incapacity, which makes the decisions irrational. Here, discrimination manifests through treating every suicidal person the same. This is called **indirect discrimination**, which occurs when a rule or policy, supposedly applying to everyone equally, works to the disadvantage of one or more groups.[73] Being treated equally does not imply treating everyone the same, rather, treating everyone in a way which leads to the same outcome, with individuals upholding personal values of dignity through the same level of respect.

Rational suicidal individuals are discriminated against because they are being treated equally to those individuals making irrational choices when it comes to suicidal decisions. The perception of suicidality going hand in hand with unsound minds gives rise to discrimination as such. The concept of rational suicide is completely left out of the law because it is not recognised as possible.

In the ECtHR case Haas v. Switzerland, where the applicant who had been suffering from a serious bipolar disorder for the last 20 years, was denied assisted suicide in the sense of a prescribed lethal drug. Although the court acknowledged a degree of discrimination in the applicant's denial to assisted suicide, considering that the majority of the states appeared to attach more weight to the protection of the individual's life than to the right to end it, the court concluded that member states had a wide margin of appreciation in such matters.[74]

3.5 The Right to Liberty

Considering the suicidal individual acting rationally, an involuntary detention would be a breach on the individual's right to liberty because there would be no legitimate aim.

The right to liberty can be limited in the need to maintain public order. One of the arguments against the right to suicide is the threat it would pose on the society if we were to be sovereign over ourselves and thus limiting the power of the absolute state. In this case, the public order may be threatened because state authorities would not prevail – although only indirectly.

The limitation under Article 5 the right to liberty section 1 e permits lawful detention of persons of unsound mind[75] in which their own interest may necessitate detention, this must be established by objective medical

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[73] Equality and Human Rights Comission 'Article 14: Protection from discrimination' [website] https://www.equalityhumanrights.com/en/human-rights-act/article-14-protection-discrimination (accessed 31. July 2022).
[74] *Case of Haas v Switzerland* (2011) 31322/07
[75] ECHR Article 5 (the right to liberty)

expertise. Thus, proceedings leading to a person's involuntary confinement must provide effective guarantees against arbitrariness. A problem is arising from the fact that rational suicides are rarely recognised by any with the absence of an unsound mind- which might shadow and deprive a whole class of people from their human rights. Consequently, if an individual is being deprived of and detained on the basis of being a threat to him or herself, without evidence of an unsound mind, then this person faces a violation of his or her right to liberty.

In order to prevent the individuals committing rational suicides from being deprived from their liberty in a degrading manner, it might be necessary to narrow the scope of the definition of mentally ill in a way that it recognises the rare situations in which suicidal behaviour can be rational. Although, in the nature of the pressured situation, making an assessment as such might not be proportionate where the life of a possible vulnerable person might be at stake.

3.6 Right to Dignity

The divergent applicability of human dignity makes it hard to define. What is commonly agreed upon, however, is that violations of human dignity go further than any other type of morally bad action.[76]

After the second world war, the UDHR was established to standardise human values universally and ensure that the grave inhumane treatment happening during the Second World War would never repeat itself. In order to understand the complexity of the concept of dignity being highly internalised and tied to the subjectivity of human values and integrity, we can turn our gaze towards the prisoners of the holocaust. In 'Man's Search For Menaing', Viktor Frankl is telling the story of how he held on to hope in the most hopeless situation as a prisoner in Auschwitz.[77] Although the ill-treatment of the gravest sort is recognised as an attack on human values and dignity- dignity itself is not necessarily something that can be taken away from you externally, because it holds an intrinsic value. Actions of other people do not reflect you; it is only a reflection of their own integrity. Therefore, dignity is something internal to self, which one cannot necessarily be robbed of unless one's own notion of what dignity entails, is violated. One can still have a feeling of dignity even though one is being degraded in the worst sense.

In many cases the argument of dignity can be used in both the opposing and supporting side of the same argument. This is shown very well in **Ronald Dworkin**'s work, where he defines human dignity as the moral right, and responsibility to confront the most fundamental questions about the meaning and value of our own lives, and thereafter act on behalf of our own convictions- which means that a society that treats its

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[76] S. Murders, 'Natural Good Theories and the Value of Human Dignity', *Cambridge Quarterly of Healthcare Ethics'* vol. 25, 2016, p. 241.
[77] V. Frankl, *Man's Search For Meaning: The classic tribute to hope from the Holocaust*, 2004.

citizens with dignity will allow them to end their own lives as they see fit.[78] Simultaneously, Dworkin also argues that in some cases, treating a person with dignity is aligned with paternalism. Since people do not always know their best interests, treating a person with dignity can sometimes mean coercively intervening in order to protect what he sees as intrinsically valuable lives. In this sense, a right to dignity entails that other people acknowledges one's genuine critical interests, interests in which the quality of a person's life depends upon, and therefore respecting a person's critical interests might require one to interfere with personal autonomy.[79]

Justin Breyer claims that the core of our great interest in dying with dignity is a freedom from unnecessary and severe physical suffering. Although it is widely agreed upon by scholars that physical pain can be eliminated by other methods than suicide, they do not necessarily agree that these alternatives are compatible with human dignity.[80]

In cases of physical illness, suffering will only last for so long, because inevitably a natural death will occur. In contrast, mental suffering can go on forever. A natural death occurs when the suffering leads to a withdrawal of bodily functions. Suicide can be viewed in a similar manner; with the pain becoming severe, after multiple attempts of treatment, there does not seem to be a cure. With no other means of escaping it, suicide becomes the only option- it is not ideal, neither is death ideal in cases of physical illness- but it can be perceived as better than its alternative. How would we classify the act of keeping alive a 4th stage cancer patient, without having medicine that could ease the suffering, and no prospect of improvement? Likely, it would be seen as both inhumane, degrading and contradicting human dignity. **Suicide does not necessarily equal to devalue life, but rather the quality of life might be valued too greatly for it to be lived without it.**

Feinberg argues that as much as it would be an indignity to force others to die against their will, it would be an equal indignity to force someone to stay alive against ones will[81], thus, human dignity requires the right to commit suicide. Enhancing this, **Schopenhauer** states that there is nothing in the world in which man is more entitled to than one's own life, and person, thus everyone is entitled to their own suicide.[82]

Pain in itself does not seem to be the sole reason for the loss of dignity, rather the loss of self, resulting from the pain, might be. Dignity can thus be said to be the intrinsic value in human beings. **Jyl Gentzler** approaches dignity in relation to pain, dependency, control, and integrity.[83] Her approach corresponds with the factors listed by Justine Dembo when it comes to the fear of losing one's dignity: loss of autonomy;

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[78] J. Gentzler 'What is a Death with Dignity?' *Journal of Medicine and Philosophy,* vol. 28, no. 4, 2003, p. 472.
[79] Ibid.
[80] Gentzler, 'What is a Death with Dignity', p. 466.
[81] Gentzler, 'What is a Death with Dignity', p. 470.
[82] Battin, 'Suicide: A Fundamental Human Right?', pp. 267-268.
[83] J. Gentzler 'What is a Death with Dignity?'.

serving as a burden to others; and losing the sense of self, especially in relation to being the receiver of indignifying care. [84]

Forcing someone to repress their human instinct to help another person in need might be violating the dignity of the potential saviour. However, if one was to think of an interference as such would amount to doing something noble, thus believing that actions as such would result in saving the sufferer, then they would be tantamount to doing something positive.

Conclusion

The research has shown that all normative systems throughout history value life. However, the extent to which this value can be overridden by other values differ between the systems and over historic time. Although philosophical attitudes towards suicide have fluctuated throughout history, it seems to have shared a common value attached to dignity, an honourable life with the absence of lasting old age, pain, suffering and shame. Suicide has largely been looked upon as a moral violation to both God and the society in general and until relatively recently it had even been officially unlawful (criminal). In many states, suicides were punished by direct sanctions to the survivor or to one's family as well as one's burial, if the suicide attempt had been successful. It was not uncommon for people dying from suicide to be denied a labelled grave, or to be mockingly paraded through the streets. On the other hand, if the suicide was committed for a greater common purpose, it could in some instances be cherished, even martyred. **The more absolute the value of life is, the more critical the view on suicide is, no matter whether it is explained as morally wrong, socially irresponsible or ungrateful to God.**

Although suicides throughout the years have gradually lost their associated sense of disgrace, suicide is still taboo in the contemporary discourse, and not a practice looked lightly upon. **The approach, though, has changed from punishment to prevention**. The notion of there being a duty to one's community, especially one's closer circle of family and friends or others relying on them to a greater extent, but also to the humanity at large, still prevails. Thus, the immorality of suicide still echoes through presumptions concerning duties to the remaining society, and notions of the greater good. Which, if not for the value of life precisely, might suggest that human dignity is not of the highest value if the loss of it can serve the greater good.

By the **social and political perspective**, individuals are valued as part of the community, thus, we value the life of the individual because we value the individual as part of the society. A stately interference is needed in order to control a sphere in which life can be valued. Otherwise, scholars have argued, we would be back

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[84] J. Dembo, 'Considering MAID in Severe, Refractory Mental Illness' Sunnybrook Health Sciences Centre, University of Toronto, 15. September 2017

in a chaotic state of nature without any manifested normative frameworks to uphold the societal structure. If we were to be indifferent of people killing themselves, then much of the social security systems would lose its power. The resilience of the society would be damaged, because people would be less motivated to help others.

The **medical perspective** is highly concentrated on the protection and preservation of life, thus often appraising the value of life from the length and the fulfilment of it. What is considered healthy is being alive and wanting to be so, and suicide is therefore seen as unhealthy. However, the value of life cannot only be measured in the lived life, the circumstances surrounding the ending of life must also be considered. **We must rethink death and how it affects the dignity of a person, and then adapt the measures prescribed accordingly.** The absence of death defines life, but not the value of life. The value of life contains so much more than just merely being alive. The balance between the personal viewpoint of an individual and the viewpoint of society becomes especially prominent, thus challenging, in the medical perspective, where the medical professionals are bound both to preserve life, but also to make life valuable and healthy without suffering. Likewise, this balance is conflicting in the **ethical perspective**, where an individual might claim to have the ultimate right to rule over one's own death, yet the society have the right to assess whether to accept someone's suicide as good or bad.

In the **legal aspect**, life is granted the highest value through its legal protection being absolute. However, this has not always been the case from a legal point of view. Legally, the individual gained value after the Second World War, through the implementation of the UDHR. The value of life thus became prominent through the emerge of the absolute right to life, along with the wide abolishment of the death penalty.

The **right to life** comes with positive obligations of the state to safeguard the lives of those within its jurisdiction through providing a regulatory framework and taking preventive operational measures. The state thus has a duty to preserve life because life is valuable. The state value life thus the state values the lives of everyone, which is why the state will always try to withstand from assisting anyone in ending life, exempt from a rarity of exceptions. It is up to the individual to kill oneself in a way that circumvents the state policies. It is therefore not a matter of the state forcing someone to live in pain. The state can do whatever is necessary to lessen the pain within the medical perspective in giving medical assistance while living, but to leave life and end pain in such a way will not be assisted.

The **right to privacy** holds the primary purpose of protect individuals against arbitrary interference which private and family life, home, and correspondence by a public authority. In end-of-life matters, there has been a number of cases suggesting that an interference with a decision as such violates the right to privacy, some in which are judged admissible by the court. Further, the state shall undertake to prevent any acts of cruel, inhuman, or degrading treatment or punishment which do not amount to torture.

With **dignity** being a cornerstone in the UDHR, it is undoubtfully closely linked to the value of life. Regardless of its divergent applicability which makes it hard to define, it is widely agreed upon that violations of human dignity go further than any type of morally bad action. This becomes evident in Article 3 of the ECHR, which is an absolute right obliging the state to prevent any acts of cruel, inhuman, or degrading treatment. **Degrading treatment** as such includes humiliating or debasing an individual, showing the lack of respect for, or diminishing one's human dignity. Nevertheless, the fact that elements of degrading treatment consist of psychological factors relatively arising in the subjective response of the victim, contribute to the arguments that the quality of one's life has deep subjective dimensions.

No normative system is in favour of suicide, but some tolerate suicide under very specific conditions as an exception. Since suicide is generally not encouraged, nor being acted in favour of, there cannot be a right to suicide. A right can only be a right if it serves to protect something that is valuable, which suicide is not. If suicide were to be valuable, then it had to be valuable all the time, in all instances, not only in exemptional circumstances as in which rational suicides might entail. **Whether there is a necessity of suicide being accepted, moreover, whether there should be a duty for the state not to interfere with decisions as such, which are made in absence of coercion and other inflicting mental illnesses limiting their mental capacity on the exact matter, should be a matter of future discussion.**

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